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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~1058~~. 671 370 90

SPENCER TRASK, APPELLANT,

vs.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, THE FLORIDA CENTRAL RAILROAD COMPANY, J. FRED SCHUTTE ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED OCTOBER 11, 1884.

case no. 21844

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INDEX.

	Original.	Print.
Bill of complaint	1	1
Exhibit A—Bond and coupon of State of Florida	11	4
B—Bond of Florida Central R. R. Co.	13	5
Subpœna	15	6
Marshal's return	16	6
Subpœna	17	6
Marshal's return	18	7
Notice of sale	19	8
Order postponing sale	20	8
Precipe for decree *pro confesso*	21	9
Appearance of defendant bondholders	22	9
Demurrer	23	10
Order overruling demurrer	24	10
Answer	25	10
Replication	35	13
Order appointing examiner	36	14
Certified copy of order appointing examiner	37	14
Report of examiner	38	14

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	Original.	Print.
Testimony of Thomas B. Coddington	39	15
Exhibit A—Deposition of T. B. Coddington, Feb. 18, 1879	48	21
B—Answer, &c., of T. B. Coddington in case of R. R. Co. *vs.* Drew, Gov'r, &c., *et al.*	56	25
C—Application to dismiss and order dismissing, T. B. Coddington as defendant in case of R. R. Co. *vs.* Drew, Gov'r, &c. *et al.*	89	45
D—Stipulations as to Exhibits	93	46
E—Petition of T. B. Coddington in Supreme Court U. S.	95	47
F—Notice of sale served on M. S. Littlefield, president J. P. & M. R. R. Co., Aug. 1, 1881	107	53
G—Notice of sale served on M. S. Littlefield, president J. P. & M. R. R. Co., Aug. 1, 1881	109	54
H—Arrangement as to bonds, &c., Jan'y 11, 1871	111	54
I—Statement of coupons of Pensacola & Ga. R. R. Co.	117	57
Judgment	119	58
Clerk's certificate	120	58
Orders of court	121	58
Appeal allowed	122	58
Bond	123	59
Assignment of errors	127	60

1 In the Circuit Court of the United States, for the Northern District of Florida. In Equity.

SPENCER TRASK, Complainant,

vs.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, The Florida Central Railroad Company, corporations created by and existing in the State of Florida; J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Barso, H. Van Booven, D'n Nicholas Jacob den Fix, J. H. Brunnekruff, J. H. Grem, Willimeter Van Tyen Van Taer, C. Both, L. L. Wertheim, Wyoman de Vogt, T. P. Raepolz, Jans Tichlaar, Jr., Jacobus Wertheim, P. Van Reysen, May de Benedithy Beer, Girard A. Heincken, T. Colom, Charles Gosewincks, Boon Hartsink, Van Tyen, N. J. Franke, Johannus Williem Donk, Vander Stoop, and Berg, who are aliens and subjects of the King of Netherlands, residing in the Kingdom of Netherlands, Defendants.

To the honorable the judges of the circuit court of the United States for the northern district of Florida:

2 And your orator, Spencer Trask, who is a citizen of the State of New York, residing in Brooklyn, brings this his bill against the said defendants, and thereupon complains and says:

1. In the year 1870 the said defendants, The Jacksonville, Pensacola and Mobile Railroad Company, a corporation created by and existing in said State, delivered to the Governor of said State one thousand bonds for one thousand dollars each, payable to the State of Florida, executed by the said defendant, The Florida Central Railroad Company, a corporation also created by and existing in said State, and received in exchange therefor one thousand bonds of the State of Florida, for one thousand dollars each, executed, issued and exchanged in accordance with the provisions of an act of the General Assembly of said State, entitled "An act to perfect the public works of the State," passed June 24th, 1869, and amended on the 28th day of January, 1870.

3 At the time the said bonds were so executed by the said defendant, the said Florida Central Railroad Company, it was the owner and in possession of and operating so much of the line of said road running from Jacksonville to Quincy, in said State, as extends from Jacksonville to Lake City, in said State, its road-bed, equipments, property, and franchises, and still is the owner thereof and operating the same; and the said defendant, The Jacksonville, Pensacola and Mobile Railroad Company was the owner of and operating the remainder of the said line.

The said bonds, State and company bear the same interest, and matured at the same time, both as to the principal and coupons.

2. The said bonds so given in exchange for the said bonds of the Florida Central Railroad Company purported to obligate the State of Florida to pay to bearer thereof the sum mentioned therein, on the day and at the place therein named, with the interest thereon represented by coupons attached thereto accruing semi-annually

thereon, a copy of one of said State bonds, with the coupons attached thereto and the endorsement thereon, is hereto
4 attached as a part hereof, marked Exhibit "A."

A copy of one of said bonds so executed by said defendant, The Florida Central Railroad Company, is hereto attached as part hereof, marked Exhibit "B." The said bonds of the Florida Central Railroad Company were executed and delivered by it to the said Jacksonville, Pensacola and Mobile Railroad Company to be so exchanged for the said State bonds; and these last were to be negotiated, on the faith of the security provided, duly certified by the endorsement thereon.

The said act of June 24th, 1869, and the said amending act of January, 28th, 1870, are hereby referred to, and, by such reference, prayed to be made a part hereof. The said Florida Central railroad bonds, so delivered to the Governors, were put on file in the office of the State treasurer of said State.

3. The said State bonds, for which the said bonds so executed by the Florida Central Railroad Company were exchanged, are numbered from 3001 to 4000, both inclusive. Of these bonds one
5 hundred and ninety-two, numbered consecutively from 3201 to 3393, both inclusive, were negotiated by said company, and came into the possession of your orator, who is a *bona fide* purchaser, holder, and owner of them, for a valuable consideration, and is willing to produce, and will produce, the same to this honorable court on the hearing hereof; and your orator avers that the said Florida Central Railroad Company has wholly failed to pay said bonds or the coupons maturing thereon, or any of them, since 1873, and the same remains wholly unpaid.

4. And your orator avers that, by virtue of said statutes, and the execution of said bonds by the Florida Central Railroad Company, and the exchange thereof for said State bonds, and the endorsement so certified on said State bonds, he is entitled to the benefit of the bonds as executed by the Florida Central Railroad Company, and so deposited with the treasurer of said State, and so exchanged for said State bonds, and to have said company's bonds and the first mortgage lien created thereby, enforced for the payment of the bonds so held by your orator, and the interest due thereon,
6 and to a statu-ory lien in the nature of a first mortgage, duly registered, on all the property of said defendant, The Florida Central Railroad Company, appertaining to the line of its road extending from Jacksonville to Lake City, in said State, with all the rights, franchises, and powers thereto belonging, and to enforce and foreclose said liens, as well for the satisfaction and payment of said past-due coupons, as also for the payment and satisfaction of the principal of said bonds.

5. The said defendants, J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borso, H. Van Booven, Den Nicholas Jacob den Fix, J. H. Brunnekruff, J. H. Grem, Willimeter Van Tyen, Van Taer, C. Both, L. L. Wertheim, Wyoman de Voogt, T. P. Raelopz, Jans Tichlaar, Jr., Jacobus Wertheim, P. Van Reysen, May de Bennedithy Beer, Girard A. Hensichen, T. Colom, Charles

Gosewinckel, Boon Hartsink, Van Tysen, N. J. Frankes, Johannes Willem Donk, Vander Stoop, and Berg, have exhibited their bill in this honorable court claiming to hold one hundred and ninety-seven of said State bonds so issued
7 and exchanged for the bonds of the Florida Central Railroad Company, and have obtained from this court a decree condemning the said road, property, and franchises of said company for the payment of their said bonds, and in pursuance of said decree has been advertised, by special masters appointed to conduct said sale, for sale on the 14th of October. 1881; that the bonds of your orator and the liens herein sought to be enforced are of equal claim and dignity, and should be satisfied and paid out of said property of said defeddant company *pari passu* with the bonds and liens of said defendants; that said property so encumbered with said liens in favor of your orator and said defendants is wholly insufficient to pay the charges upon it, and said sale should be stayed until the equities and liens herein set up shall be adjudicated and determined by this honorable court.

To the end, then, that your honorable court take jurisdiction of the case made by this biil, that the said Jacksonville, Pensa-
8 cola and Mobile Railroad Company, the Florida Central Railroad Company, corporations created and existing, residing in the State of Florida, J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Barso, H. Van Booven, D'n Nicholas Jacob den Fix, J. H. Brunnekruff, J. H. Grem, Willimeter Van Tyer, Van Taer, C. Both, L. L. Wertheim, Wyoman de Voogt, T. P. Roelopz, Jans Tichlaar, Jr., Jacobus Wertheim, P. Van Reysen, May de Benedithy Beer, Girard A. Heinchin, T. Colom, Charles Gosewinckel, Boon Hartsink, Van Tyen, N. J. Frankel, Johannes Willem Donk, Vander Stoop, and Berg, who are aliens residing in the Kingdom of the Netherlands, be made parties defendant hereto, by appropriate process; that the amount due your orator as holder of said bonds be ascertained, and the said defendant, The Florida Central Railroad Company be required to pay the same; that the equities of your orator herein set up be recognized by this court; that the liens of your orator, for the security of the debt evidenced by said bonds, on the road-bed, equipments, powers, franchises, and
9 properties appertaining thereto of said company, extending from Jacksonville to Lake City, be established by the decree of this court; that said lien be enforced by a sale thereof for the payment and satisfaction of said debt, both of principal and interest; that, in the mean time and until the debt and lien of your orator is established by this court, as a debt of equal claim, lien, and dignity, with the lien and debt of said non-resident defendants, so ascertained and declared by the decree of this court, heretofore rendered, the sale of said road-bed, equipments, &c., be stayed and enjoined by the order and decree of this court.

And may it please your honor to grant unto your orator such other and further or further or other relief in the premises as the nature of the case may require, and as may be agreeable to equity

and good conscience, and as in duty bound your orator will ever pray, &c.

COCKERELL & WALKER,
Complainant's Solicitors.

10 UNITED STATES, *Southern Dist. of N. York:*

Before me personally came Spencer Trask, the complainant in this above-entitled cause, who being first duly sworn says: That he has read the foregoing bill of complaint and that the matters of fact therein are true.

Sworn and subscribed before me, this 30th Sept., 1881.

——— ———, ——.

UNITED STATES OF AMERICA, *Southern District of New York:*

Spencer Trask, who is personally known to me, being first duly sworn by me, says: That he has carefully read the foregoing bill of complaint and that all and singular the allegations therein contained are true.

SPENCER TRASK.

Subscribed and sworn to before me, this 4th of October, 1881.

[SEAL.] GEO. F. BETTS,
U. S. Commissioner in & for the Southern District of New York.

11 EXHIBIT A.

No. ——. No. ——.

United States of America, State of Florida.

It is hereby certified that the State of Florida justly owes to ——, or bearer, one thousand dollars, redeemable in gold coin of the United States, at the Florida State agency, in the city of New York, on the 1st day of January, 1900, with interest thereon at the rate of eight per centum per annum, payable half-yearly at the said Florida State agency in gold, on the 1st days July and January in each year, from the date of this bond and until the principal be paid, on surrendering the proper coupons hereto annexed.

Tallahassee, January 1, 1870.

[SEAL.] HARRISON REED, *Governor.*
S. B. CONOVER, *Treasurer.*

Issued in accordance with act of Legislature of Florida, approved January 28th, 1870.

Form of Coupons.

The State of Florida will pay to bearer forty dollars in gold, at the State agency, in the city of New York, for interest due ——— on bond for $1,000.

No. ——.

S. B. CONOVER, *Treasurer.*

12 Indorsement.

No. —. $1,000.

State of Florida Thirty-Year Eight per cent. Bonds.

Payable January 1st, 1900. Interest payable 1st July and January in gold at Florida State Agency, in the city of New York.

This bond is one of a series issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company to the extent of $16,000 per mile upon completed road the State of Florida holding the first mortgage bonds of said railroad company for a like amount as further security to the holder thereof.

HARRISON REED,
Governor of Florida.

13 EXHIBIT "B."

No. ——. $1,000.

United States of America, State of Florida.

Bond of the Florida Central Railroad Company.

Know all men by these presents, that the Florida Central Railroad Company acknowledges itself indebted to the State of Florida in the sum of one thousand dollars for value received, which sum the Florida Central Railroad Company promises and agrees to pay to the State of Florida on the first day of January, A. D. nineteen hundred, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable semi-annually on the first days of July and January, on each year, on the presentation and delivery of the proper coupons hereunto attached.

This bond is one of a series of like tenor, limited to sixteen thousand dollars per mile, issued in accordance with an act of the Legislature of the State of Florida, approved January 28th, eighteen hundred and seventy, entitled an act to alter and amend "An act entitled an act to perfect the public works of the State, ap-
14 proved June 24th, eighteen hundred and sixty-nine," and given in exchange for bonds issued by the State of Florida to aid the Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road for an equal amount, in accordance with said act.

In witness whereof, the said company has caused this bond to be signed and attested in its behalf by its president, and the common seal affixed, at its office, in ——, this first day of January, in the year 1870.

GEO. W. SWEPSON, *President.*

H. H. THOMPSON, *Treasurer.*

(Endorsement:) In circuit court of the United States, northern dist. of Florida. Spencer Trask *vs.* The Jacksonville, Pensacola and Mobile Railroad Company, The Florida Central R. R. Co., J. Fred. Schutte, Jans Prins, *et al.* Bill for injunction and relief. Filed Oct. 7, 1881. Philip Walter, clerk. Jno. S. Driggs, deputy. Jack-

sonville, Fla., Nov. 5th, 1881. Service accepted for J. Fred. Schutte & others, defendant bondholders. C. D. Willard, solicitor, &c.

15 UNITED STATE OF AMERICA,
Northern District of Florida:

The President of the United States to Jacksonville, Pensacola and Mobile Railroad Company, a corporation created and existing by and under the laws of Florida:

We command you and every of you, that you appear before the judges of the circuit court of the United States of America for the fifth circuit and nothern district of Florida, at Jacksonville, in said district, on the first Monday, being the 7th day of November next, to answer to a bill of complaint exhibited against you by Spencer Trask, a citizen of the State of New York, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf; and this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 7th day of October, A. D. 1881.

[SEAL.] PHILIP WALTER, *Clerk*,
By JNO. S. DRIGGS, *Deputy.*

COCKRELL & WALKER,
Sol'rs for Comp'ts.

16 *Memorandum.*

The above defendant- are notified that unless they enter their appearance in the clerk's office of said court at Jacksonville aforesaid on or before the day to which the above is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

PHILIP WALTER, *Clerk*,
By JNO. S. DRIGGS, *Deputy.*

Endorsement: Circuit court United States, northern dist. of Florida. Spencer Trask *vs.* The J., P. and M. R. R. Co., J. Fred. Schutte, Jans Prins, Adrianus Prins, *et al.* Chancery subpœna. Returnable rule day first Monday of November, A. D. 1881. Cockrell & Walker, compl't's solicitors. Filed Oct. 24, 1881. Philip Walter, clerk, by Jno. S. Driggs, deputy.

Received the within writ of chancery subpœna this 24th day of October, A. D. 1881, and executed the same on the 24th day of October, A. D. 1881, at Jacksonville, in this northern district of Florida, by delivering to and leaving with Frank W. Ely, secretary of the within-named defendant corporation, a true copy hereof, at the same time exhibiting this original writ, no other officer of the defendant

corporation being within the northern district of Florida upon whom service could be made.

JOSEPH H. DURKEE,
U. S. Marshal, Northern District of Florida.

17 UNITED STATES OF AMERICA, *Northern District of Florida:*

The President of the United States of America to the Florida Central Railroad Company, a corporation created and existing under the laws of the State of Florida:

We command you, and every of you, that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida, at Jacksonville, in said district, on the first Monday, being the seventh day, of November next, to answer a bill of complaint exhibited against you by Spencer Trask, a citizen of the State of New York, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf; and this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 7th day of October, A. D. 1881.

[SEAL.] PHILIP WALTER, *Clerk*,
Per JNO. S. DRIGGS, *Deputy.*

COCKRELL & WALKER,
Solicitors for Comp.

18 *Memorandum.*

The above defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

PHILIP WALTER, *Clerk*,
Per JNO. S. DRIGGS, *Deputy.*

Endorsement: Circuit court United States, northern dist. of Florida. Spencer Trask *vs.* The Florida Central R. R. Co., J. Fred. Schutte, Jans Prins, Adrianus Prins, *et al.* Chancery subpœna. Returnable first Monday in November, 1881. Cockrell & Walker, comp't's solicitors. Filed Oct. 24, 1881. Philip Walter, clerk, per Jno. S. Driggs, deputy.

Received the within writ of chancery subpœna this 24th day of October, A. D. 1881, and executed the same on the 24th October, A. D. 1881, at Jacksonville, in the northern district of Florida, by delivering to and leaving with E. M. l'Engle, president of the within-

named defendant corporation, a true copy hereof, at the same time exhibiting to him this original writ.

JOSEPH H. DURKEE,
U. S. Marshal, Northern District of Florida.

19 *Sale of the Florida Central Railroad.*

Circuit Court of the United States for the Northern District of Florida. In Equity.

J. FRED. SCHUTTE, JANS PRINS, *et al.*, Complainants,
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY *et al.*

Notice is hereby given that under and in pursuance of a decree made by said court in the above-entitled cause, dated the 31st day of May, 1879, we, the undersigned, special masters appointed by said decree for that purpose, will sell at public vendue, at the post-office in Jacksonville, in said district of Florida, to the highest bidder therefor, for cash, at one o'clock p. m. on the 14th day of October, A. D. 1881, the following-described property, viz: The railroad running from Lake City to Jacksonville, in said district and State of Florida, together with all of the property, privileges, and franchises pertaining thereto, the same being known as the Florida Central Railroad.

SHERMAN CONANT,
ALEXANDER B. HAWKINS,
Special Masters.

Dated July 8th, 1881. J'y 9, td.

The above sale is postponed until 12 o'clock noon, on Saturday, November 5th, A. D. 1881, by order of plaintiffs' attorney & solicitor.

SHERMAN CONANT,
ALEXANDER B. HAWKINS,
Special Masters.

Oct. 2d. td.

20 United States Circuit Court, Northern District of Florida.

SPENCER TRASK
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY *et al.*

In this cause, on application of the complainant, and on considering the sworn allegations of his bill and the terms of the decree made by Justice Bradley in the case of J. F. Schutte *et al. vs.* The Jacksonville, Pensacola and Mobile Railroad Company *et al.*, filed on the 31st of May, A. D. 1879, and further considering the advertised sale and postponement thereof of the Florida Central railroad, as shown by the advertisement in the margin hereof, it is ordered that the sale of the Florida Central railroad, as advertised by Sherman Conant and Alexander B. Hawkins, special masters, to be made on

Saturday, November 5th, A. D. 1881, be further postponed until the second Saturday in December, 1881, or until such day as the circuit court for the northern district of Florida, sitting at Jacksonville, after hearing the parties may determine.

DON A. PARDEE,
Circuit Judge.

New Orleans, La., Nov. 3d, 1881.

21 Endorsement: In circuit court of the United States, northern dist. of Florida. Spencer Trask *vs.* The Jacksonville, Pensacola and Mobile R. Road Company, The Florida Central R. R. Co., J. Fred. Schutte, Jans Prins *et al.* Injunction. Filed this 5th day of Nov'r, A. D. 1881, at 2 o'clock p. m. Philip Walter, clerk. Cockrell and Walker, solicitors for compl't.

Circuit Court of the United States, Northern District of Florida.

SPENCER TRASK
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY *et al.* } In Equity.

The clerk of said court will please enter a decree *pro confesso* against the above-named defendants, The Jacksonville, Pensacola and Mobile Railroad Company, for want of appearance, answer, or demurrer to the bill of complaint in said cause filed.

COCKRELL & WALKER,
Complainant's Solicitors.

Jacksonville, Fla., Dec'r 5th, 1881.

To Philip Walker, Esq., clerk.

22 Endorsement: Circuit court U. S., northern district of Florida. Spencer Trask *vs.* The Jacksonville, P. & M. R. R. Co., The Florida Central Railroad Company *et al.* *Præci.* for decree *pro conf.* as to Florida Cent. R. R. Co. Filed Dec'r 5th, 1881. Philip Walter, clerk. Cockrell & Walker, comp. sol'rs.

Circuit Court, 5th Circuit, N. Dist. of Fla.

SPENCER TRASK
vs.
J., P. & M. R. R. Co., FLA. CENT. R. R. Co., J. FRED. SCHUTTE *et al.*

Comes now C. D. Willard, and enters his appearance in said cause for J. Fred. Schutte and other defendants, bondholders.

C. D. WILLARD,
By JOHN A. HENDERSON.

Dec'r 5th, 1881.

Endorsement: In circuit court of the U. S., N. dist. of Florida. Spencer Trask *vs.* The J., P. & M., Fla. Cen. R. R., J. Fred. Schutte *et al.* Appearance for Schutte & others, bondholders. Filed Dec'r 5, 1881. Philip Walter, clerk. C. D. Willard, for def't.

23 In the United States Circuit Court for the Northern District of Florida.

SPENCER TRASK, Complainant,
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD and THE FLORIDA CENTRAL RAILROAD, and others, *et al.*

Comes now the defendants served in this cause by their solicitor, John A. Henderson, and say that the said bill is not sufficient in law to be answered unto, and for cause of demurrer assigns "that there is no ins. said bill;" and further, that the complainant does not show a sufficient title to the bond upon which he seeks a recovery to entitle him to any action thereon, and for other causes.

JOHN A. HENDERSON,
Sol'r for Def'ts.

I certify that in my judgment the foregoing grounds of demurrer are well taken.

JOHN A. HENDERSON,
Sol'r for Def'ts, &c.

Dec'r 31, 1881.

24 Demurrer signed and overruled. Leave to defendants to answer by the first Monday in August.

THOMAS SETTLE, *Judge.*

June 24th, 1882.

25 In the United States Circuit Court for the Northern District of Florida.

SPENCER TRASK
vs.
THE J., P. & M. R. R. *et al.*

The answer of J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, D'n Nicholas Jacob den Fix, J. H. Brunkenruff, J. H. Grem, Willehen Van Tysen Van Taer, E. Bock, L. S. Wertheim, Wyoman Vogt, F. P. Raelpoz, Jan Tischlaar, D. Jacobus Wertheims, P. Van Reysen, T. Colom, Charles Gosewinckle, Gerard A. Heimneh, May de Benedithy Beers, Boon Hartsink, Van Tyen, N. J. Frunket, Johnannes William Donck, Vander Stoop, and Berg, who are defendants to the bill of complaint exhibited in this court by the complainant, Spencer Trask.

Saving and reserving to themselves all manner of exceptions to the insufficiencies of the said bill, these defendants, answering, say:

1st. That at the time the bill in this cause was filed they were the owners of so many of the bonds of the said State of Florida issued to the defendant, Jacksonville, Pensacola and Mobile Railroad Company, as were paid into the registry of this honorable court,

26 prior thereto, and which were numbered above 3,001 and below 4,000, each bond for $1,000. That the said bonds so

held by them, and held as aforesaid in the registry of this court, were on the 31st May, 1879, adjudged a first lien on the line of railroad called in this bill the Florida Central railroad, being that line of rail running from Jacksonville to Lake City, in the State of Florida, to the extent of $197,000 principal, and $118,515.25 interest then due, and for all interest to mature on said principal sum, by Mr. Justice Bradley in this court. That by the said court it was ascertained that these defendants were holders of said bonds without notice of any vice or defect which vitiated the titles thereto. That since the filing of said bill, to wit, on the — day of February, A. D. 1882, the said Florida Central railroad has been sold under the decree above referred to, to wit, the decree in the case of J. Fred. Schutte *et al. vs.* The Florida Central Railroad Company *et al.*, and the same was purchased by one Edward James Reed, and the purchase-money was paid therefor, and that these defendants
27 have been paid, and fully satisfied for their said bonds, and the decree therefor, and the said road has passed into the ownership, possession, and management of a new set of owners, and into the hands of a new corporation, to wit, into the ownership and control of "The Florida Central and Western Railroad Company," a corporation duly organized under the laws of Florida, and within the jurisdiction of this court. Wherefore these defendants say that they ought further to be held to answer this complainant, but plead that they should be hence discharged with their reasonable costs.

4th. And these defendants further in their defence say the premises considered that the complainants bill, is without equity as to them.

5th. These defendants, further answering, say, upon information derived from the files and records of this honorable court, in the case of J. Fred. Schutte *et al. vs.* The Jacksonville, Pensacola and Mobile Railroad Company *et al.*, that as to the bonds of the State of Florida, from 3,001 to 4,000 in number, mentioned in the complainant's bill of complaint, the same were never issued in
28 accordance with the laws of Florida, authorizing their issue, but were exchanged by the Governor of the State of Florida irregularly and unlawfully for certain bonds purporting to have been issued by the Florida Central Railroad Company. That such issue was repudiated and annulled, recalled, and revoked prior to the exchange aforesaid, of which due notice was given, among others to one Thomas B. Coddington. That in addition to the action of the Florida Central Railroad Company, revoking and annulling and expressly repudiating the authority of any one to exchange its bonds for the bonds of the State of Florida, there was an injunction granted by the circuit court of the State of Florida for Leon county, enjoining such exchange and forbidding the transfer or removal of said bonds from the jurisdiction of said court, at the suit of certain stockholders of said company. That this injunction has never yet been dissolved, but remains in full —— and effect. That certain parties, with selfish motives, and for purposes foreign to those of the laws of Florida, authorizing the issue of said bonds,
29 clandestinely, secretly, and unlawfully exchanged the same with the Governor of Florida for the bonds of the State of

Florida, mentioned as between Nos. 3,001 and 4,000, and notwithstanding the frauds practiced on the Florida Central Railroad Company, but in contempt of the injunction aforesaid, clandestinely and secretly, by one of their number, to wit, one Thomas B. Coddington, by sinister ways and unusual hours, removed at night, and by other than the usual highways of travel, from the State of Florida, pledged by the said Coddington, for the application of the proceeds of the sale of the same, to purposes other than the extension of the line of railroad, as contemplated by the laws of Florida, authorizing the issue of said bonds, to wit, to the payment to Edward Houston of $163,026.30, and interest from the date of the maturity of a certain draft to one M. S. Littlefield or one S. W. Hopkins or S. W. Hopkins & Co., and also of $5,000, and to Edward Houston for R. H. Gamble, for stocks in the Fla. Central, $15,000, J. P. Sander-
30 son, 50,560, T. H. Flagg, 4,000, with the remainder of the proceeds to be applied, according to the directions of one M. S. Littlefield, who was then the president of the Jacksonville, Pensacola and Mobile Railroad Company, and who was also one of the parties who secured the fraudulent exchange of bonds hereinbefore stated. That the said corporation, The Jacksonville, Pensacola and Mobile railroad, it was then claimed by the said Coddington, was his debtor, and his participation at this fraudulent exchange and removal of bonds from the State of Florida, was, it is presumed, for the purpose of reimbursing himself from the Florida Central Railroad Company, a corporation that did not then owe him one cent.

6. That the said Coddington took the said bonds to New York, and they were thence, after many and serious litigations and false and fraudulent compromises, transferred to Europe, to wit, to London. From thence, and without knowledge of these defendants, the 197,000 once held by them were sold in Amsterdam to these
31 defendants, but of said bonds the 196 referred to by complainants as being held by him were finally delivered to the said Coddington as a security for a claim of $40,000 or more, growing out of his aforesaid transactions, irregular and fraudulent in their legal aspects. That after the decree in the Schutte case before referred to the said Coddington, while the said case was pending an appeal in the Supreme Court of the United States, to wit, on the appeal of the Florida Central Railroad Company *vs.* J. Fred. Schutte *et al.*, the said Coddington made petition to be allowed to fill the identical 196,000 of the bonds of the State of Florida., the subject-matter of this bill of complaint, and participate with these defendants as a holder of bonds of an equal lien with theirs on the property of the Florida Central Railroad Company; but his said petition was denied by the Supreme Court of the United States. Wherefore these defendants say that the subject-matter of this bill is "*res adjudicata.*"

And, further answering, these defendants say that after the
32 rendition of the decree in their favor in the aforesaid Schutte case and after the action of the Supreme Court as aforesaid, the said Coddington caused the identical 196 bonds mentioned in this bill to be sold in the exchange of the city of New York; that at

said sale notice of the irregular, false, and fraudulent character of said bonds was duly given by one J. B. Stewart, who was then the counsel of the Florida Central Railroad Company. That at such sale this complainant, with full knowledge of the notice given, and, as these defendants are informed and verily believe, with full knowledge of all the acts and dealings of the said Coddington in the premises, became the purchaser of said bonds.

Wherefore these defendants insist that the said bonds are held by the said Trask with the same equities and no greater than they were entitled to in the hands of the said Coddington, and that the said Coddington was not a holder of said bonds without notice of
33 any vice or defect which vitiated the title thereto.

These defendants, furthering answering, say each and every allegation of said bill which relates to themselves, and which is not herein particularly confessed or traversed; and having fully answered, they pray to be hence dismissed with their reasonable costs.

JOHN A. HENDERSON,
Counsel for Defendants.

STATE OF FLORIDA, *Duval County:*

John E. Hartridge, being first duly sworn, deposes and says: That he is of counsel for the defendants in this case as above; that they are absent from this State of Florida; that he has read the foregoing answer and knows the contents thereof, and that the same is true in substance and in fact, to the best of his information, knowledge, and belief.

JOHN E. HARTRIDGE.

Sworn and subscribed before me, this 5th of August, 1882.

PHILIP WALTER,
U. S. Commissioner.

34 Endorsement: In U. S. circuit court, N. district of Florida. Spencer Trask *vs.* The Fla. Cen'l *et al.* Answer of defendants Schutte *et al.* Filed August 6th, 1882. Philip Walter, clerk. Henderson & Hartridge, for def'ts.

35 *General Replication.*

In Circuit Court of the United States in and for the Northern District of Florida.

SPENCER TRASK *vs.* THE J., P. AND M. R. R. Co. *et al.*

This repliant, Spencer Trask, for replication to the answer of J. Fred. Schutte, Jans Prins, *et al.*, filed August 6th, 1882, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith: That he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatever in the said answer contained material or effect-

ual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court
36 shall direct; and humbly prays as in and by his said bill he hath already prayed.

COCKRELL AND WALKER,
Attorneys for Complainant.

Endorsement: In circuit court of the United States in and for the northern dist. of Florida. Spencer Trask *vs.* The J., P. and M. R. R. Co. *et al.* General replication. Filed Aug. 30th, 1882. Philip Walter, clerk. Cockrell and Walker, sol'rs for comp't.

SPENCER TRASK
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY *et al.*

On motion of complainant, it is ordered that Lee Phillips be, and is hereby, appointed examiner to take testimony in said cause.
October 13, 1882. THOMAS SETTLE, *Judge.*

37 SPENCER FRANK *vs.* THE FLORIDA RAILROAD COMPANY *et al.*

On motion of complainant, it is ordered that Lee Phillips be, and he is hereby, appointed examiner to take testimony in said cause.
Oct. 13, 1882. THOMAS SETTLE, *Judge.*

I, Philip Walter, clerk U. S. circuit court, 5th circuit, northern district of Florida, do hereby certify that the foregoing is a true copy of the original order appointing Lee Philips examiner, on file and of record in my office.

Witness my hand and official seal, at the city of Jacksonville, the eighteenth day of October, 1882, and of our Independence the 107th year.

PHILIP WALTER, *Clerk.*

38 United States Circuit Court, Fifth Circuit, Northern District of Florida. In Equity.

SPENCER TRASK, Complainant,
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY *et al.*, Defendants.

To the honorable the judges of the United States circuit court for the fifth circuit, northern district of Florida:

I, Lee Philips, the undersigned examiner, duly appointed by order of this court, dated October 13th, 1882, to take testimony in the above-entitled cause, a certified copy of which order is hereunto annexed, do hereby respectfully certify and report:

That, in pursuance of said order, on the 25th day of October, 1882, at the office of J. B. C. Drew, Esq., at No. 37 and 39 Wall street, in the city of New York, I proceeded to examine the witness brought before me as hereinafter mentioned.

That notice of the time and place of taking testimony under said order was duly given to C. D. Williard, Esq., representing the respondents in said suit, and that by agreement of the parties the said examination was fixed for the time and place aforesaid.

That A. W. Cockrell, Esq., appeared on behalf of the complainant, and C. D. Willard, Esq., appeared on behalf of the said respondants, J. Fred. Schutte and others, when the following proceedings and testimony were had and taken:

39 THOMAS B. CODDINGTON, a witness called on behalf of the complainant, being first duly sworn, testifies as follows:

I reside at No. 42 Fifth avenue, in the city of New York; my business is that of a merchant in metals and iron; I will be sixty-eight years old on my next birthday; I have been dealing in metals and iron since 1835; I am acquainted with the complainants in this action: his place of business is at No. 70 Broadway, New York city; residence is in Brooklyn.

My recollections of the matters inquired about is fully set forth in my deposition taken in this court in the case of J. Fred. Schutte and others, complainants, *vs.* The Western Division of the Western North Carolina Railroad Company and others, defendants, and I hereby refer to my said deposition and reaffirm the statements and allegations therein.

A copy of the said deposition is hereto appended, marked Exhibit "A," as a part hereof.

A copy of the answer of Thomas B. Coddington, referred to in said deposition, is hereto appended as a part hereof, and marked Exhibit "B."

It is agreed by the solicitors of the respective parties now here before me that said exhibits, as above referred to and made part hereof, shall have the same force and effect, to all intents and purposes, as if repeated, reaffirmed, and incorporated herein *in extenso*.

October 25th, 1882. LEE PHILLIPS, *Examiner*.

The witness, further testifying, says:

The suit of the Western Division of the Western North Carolina Railroad Company *vs.* George F. Drew, Governor, and others, referred to in my said deposition, was dismissed as against me after my answer was put in. It was dismissed upon the application of Joseph B. Stewart, the complainant's solicitor and attorney-in-fact in said suit.

40 A copy of the application to dismiss and the order dismissing the suit as against the witness are hereto appended and marked Exhibit "C."

The examination was, at this point, adjourned to the 26th day of October, 1882, at 10 o'clock a. m., at the same place.

LEE PHILLIPS, *Examiner*.

OCTOBER 26, 10 A. M.

October 26th, 1882, 10 o'clock a. m., parties met pursuant to adjournment.

Present: Col. Cockeral, for complainant, and C. D. Willard, for def't Schutte *et al.*

A stipulation was entered into by the respective parties respecting certain parts of the record in the case of Schutte *et al. vs.* The J., P. and M. R. R. Co. *et al.*, in the Supreme Court of the U. S., that testimony may be read at the final hearing; also for reference to the petition of the complainant entering in the U. S. Supreme Court as testimony, said stipulation being filed and annexed, marked Exhibit "D."

Said petition, printed copy, is herewith filed as evidence for the defendant, marked Exhibit "E."

Q. You have stated the circumstances under which the 1,000 bonds of the Florida Central Railroad Company were exchanged for State bonds, and your connection therewith; state who was present when this exchange was made and the State bonds delivered.

Answer. The Governor of Florida, Harrison Reed; Col. Gamble, the comptroller; Col. Houston, and myself, and a servant of Col. Houston's, and others in the office, and I believe Attorney General J. B. C. Drew and others, employees of the office.

Q. Mr. Coddington, at the time you received these bonds and undertook the execution of the trusts created thereby, hereinbefore referred to, did you have any knowledge or suspicion of any fact or circumstance calling in question the validity of said Florida Central bonds or their issue or their delivery to the J., P. and M.
41 Railroad Company, or the validity of the said State bonds or their exchange for the said Florida Central railroad bonds, or any knowledge of any fact or circumstance affecting or impugning in any way the good faith or purpose in which these bonds, or either of them, were executed, issued, transferred, or exchanged, or any fact or circumstance affecting the application of the proceeds of the sale of the said bonds, or the good faith of any party to the transaction to which you have testified, or any fact or circumstances connected with the removal of the said State bonds from the State of Florida tending to call in question the good faith or purpose of the transaction referred to, or of either or any of them, parties to said transaction?

Answer. None whatever; the comptroller was anxious to have it carried out on account of his interest, as was Gamble and Houston, and the Governor, in behalf of the State, who provided that the proceeds, after payment of those who it was alleged had liens on them, should be placed to the credit of the State, and after all parties had been seen and I declared to them that I was about to go with the bonds by the conveyance provided for me by the president in a carriage to Thomasville, Ga., who sent with me his secretary as far as Charleston, for the safety of the bonds. I received these bonds and understood the execution of this trust in entire and absolute good faith.

Q. Was the money to be paid you by the J., P. and M. Company, by the agreement of August 19, 1872, paid you by said company, or was default made therein?

Answer. No, it was never paid.

Q. State what you did with the 192 bonds, if anything, recovered by you under said agreement.

Ans. They were sold at auction by E. H. Ludlow & Company, Morris Wilkins, auctioneer, under my order, in pursuance of the authority contained in the agreement of August 29, 1872, after personal notices given to Milton S. Lintefield, as president of the J., P. and M. Railroad Company, which original notices are hereto appended and marked Exhibits "F" and "G," respectively. Notices
42 of the sale and adjourned sale were also published in the New York Journal of Commerce, the Commercial Advertiser, the Evening Post, and I think some other papers or paper, all published in the city of New York.

They were also published in the Florida Daily Union, a newspaper published at Jacksonville, in the State of Florida.

These notices set forth the time and place of sale, namely, the public salesroom at 111 Broadway, New York, where securities of this class are usually sold. A printed copy of one of said notices, the others being of like kind, is hereto annexed, as follows:

"Auction Notices." Morris Wilkins, Auctioneer.

Sale of Florida State bonds.

E. H. Ludlow & Co. will sell at auction, on Monday, Aug. 22, 1881 at 12 o'clock, at the exchange salesroom, No. 111 Broadway, 192 bonds of the State of Florida, each for one thousand, issued in exchange for bonds of the Florida Central Railroad Company January 1, 1870. Said bonds will be sold under a power vested in me by an agreement between me and the Jacksonville, Pensacola and Mobile Railroad Company, dated August 29th, 1872.

New York, August, 1881.

T. B. CODDINGTON,
27 Cliff St., New York.

The above sale is adjourned until Monday, September the 12th, 1881, at 12 o'clock, at the same place.

T. B. CODDINGTON,
27 Cliff St., New York.

Such sale took place in accordance with the said advertisement, and the bonds were bought by Spencer Trask, the complainant in this case, at and for the sum of $28,800. I delivered the bonds to Trask and received the money for them on the day of sale from Mr. Trask.

43 Witness cross-examined by Mr. WILLARD:

I went to Florida about the early part of January, 1871; my primary object in going to Florida was to serve the parties and to

facilitate the consummation of the negotiations by the transferring of these 1,000 bonds of the State of Florida to London, where it was said by Hopkins that the negotiation for this sale had been agreed upon, the parties in interest stating that it would enable them to pay me in cash for any coupons.

The result of the conference was that they, Hopkins & Co., would agree to give me $25,000 for the service of taking these bonds to Europe, for the risk and responsibility, upon the payment of which I was to deliver to them certain coupons of the Pensacola & Georgia Railroad Company, amounting to $24,465 face value, as stated in the agreement of the 29th of August, 1872.

Ques. You have testified that you went to Tallahassee and received the bonds, the 1,000 bonds of the State of Florida as set out in Exhibit B of your testimony in this case, on pages 11 and 12. Before you left Tallahassee with these bonds is it not true that an injunction was granted by the judge of the circuit court for Leon county of said State, on the application of Robert H. Gamble and J. D. Westcott, restraining the Governor of Florida and the other State officials from delivering or dealing with these bonds?

Ans. I don't think any such injunction was sued out. I understood from Houston that Gamble and Westcott had got out an injunction preventing his sending the bonds by me, and that on account of their having a claim or lien on the proceeds of the bonds, for the bonds, for the amount of sworn stock and bonds which they held.

This led to my suing Gamble and Westcott, and they agreed for a consideration to withdraw their opposition and dismiss the injunction and suit.

Ques. Was that agreement in writing; and, if so, state what it was?

Ans. Judge Westcott gave me the option to take his stock and bonds for a certain sum, hereinbefore set forth, which I accepted before I left Tallahassee, and I gave him a draft on my firm
44 in New York for the amount which was paid and the money repaid by Hopkins & Co., they taking an order on Westcott for the bonds and stock.

In regard to Gamble, the only paper signed was the receipt by me to Houston, of the date of January 11th, 1871, in which provision was made for payment to him of $15,000.

Gamble subsequently recovered judgment against me on this agreement for the amount of $15,000, and interest and costs, amounting to nearly $22,000.

Ques. Did you not know when you received these State bonds that the acts authorizing this issue provided that they should be used exclusively in building the road west?

Ans. I had been living for several years in London, and knew nothing about affairs in Florida in regard to these roads, and knew nothing whatever of any restrictions or limitations in the act authorizing their issue as to the application of their proceeds, nor did I have a doubt but that they were right in every respect.

Ques. At the time you received these bonds, and before you left Tallahassee, did not Governor Reed tell you that you must not take

the bonds out of the State until provision had been made for their payment of monies due the State?

Ans. Yes; and before leaving the Governor told me that Littlefield had made satisfactory arrangements, and Littlefield gave me a written instrument, dated January 12, 1871, to place the balance, after payment to Houston, Papy, Gamble, and others, to the order of the Governor, and this letter was taken to the Governor, who made thereon the endorsement directing me what to do with the sum so placed to his credit. Subsequently the Governor endorsed an order of Littlefield, approving and ratifying it, directing me to deliver the 1,000 bonds (imposing on me the single duty of procuring from Hopkins & Co. their signature to the written agreement entered into), as set forth on page 16 of Exhibit B of my testimony herein, which obligation Hopkins & Company gave them, the bonds were delivered to them on the order of Houston, Littlefield, and the Governor, copies of which are hereto appended and marked Exhibit "H."

45 Ques. Were you present at the sale of the 192 bonds?

Ans. Yes.

Ques. Who purchased the bonds at the sale; what individual made the bid?

Ans. I think it was Mr. Peabody, who was connected in business with Mr. Trask in some way, I think; I don't know whether as clerk or partner; I think that was the gentleman, though I never saw him before that I remember; Trask was the purchaser, Mr. Peabody bidding them in in Mr. Trask's name.

Ques. Was Mr. Trask present at the sale?

Ans. Not to my knowledge.

Ques. You say that Mr. Trask was not present at the sale to your knowledge; what makes you say that he was the purchaser?

Ans. I was at the side of the auctioneer on the stand, and his name was given as the purchaser by the bidder, and subsequently I received his check for the amount, $28,800.

Ques. Was the individual check of Mr. Trask [given] or of his firm, and was it given to you on the day of the sale?

Ans. I don't remember whether it was his individual or the check of his firm; it was certified and given to me on the day of the sale, when I delivered the bonds.

Ques. Was it payable to your order, and did you endorse it and receive the money on it?

Ans. It was payable to the order of Ludlow & Co., and they endorsed it, and I deposited it in the bank, and received the money upon it in that way.

Ques. Was there any other bid made at the sale except the one made on behalf of Mr. Trask; and, if so, please state what other bids were made?

Ans. Some person made a bid above the bid of Mr. Trask, and the bonds were struck off, but when he was called he did not

46 respond, and I think it resulted in being struck off at Mr. Trask's bid, the auctioneer not being able to get any other.

Ques. How long have you known Mr. Trask, and have you been in the habit of doing a banking or brokerage business with his firm?

Ans. I have known him several years. He has done some business for me, very little—not to amount to much—I think to the extent of, not exceeding, perhaps $2,000 or $3,000, in some mining stocks and the purchase of some gold for me when gold was at a premium.

Ques. Was there a notice read at the sale by anybody; and, if so, what was the purport of it, [and] by whom was it given?

Ans. There was a paper read by Joseph B. Stewart, or by some person for him, the particulars of which I don't remember; but its general character was to the effect that the bonds offered for sale were illegal.

Ques. Did not you and your counsel have frequent conversations with Mr. Trask about the purchase of these bonds some time prior to the sale which you speak of?

Ans. I did not, and don't think my counsel did.

Ques. Did you not inform Mr. Trask of all the circumstances regarding the issue and litigation concerning these bonds?

Ans. I don't think I ever talked with Mr. Trask about the bonds at all, nor gave him any information in regard to them.

Ques. You have stated that you received $28,800 as the proceeds of the sale of these bonds. Please state whether or not you ever collected the money on the coupons of the Pensacola and Georgia Railroad Company mentioned in your direct examination; and, if so, please give the amounts and date.

Ans. I received the amount due on the coupons referred to, both of principal and interest, due to the date of payment to my solicitors, Messrs. Cockall and Walker, of Jacksonville, Florida; that is, seventy-five per cent. thereof about October 20, 1881, and the remainder about July 7th, 1882, less the charge of my counsel
47 for collecting, to wit, about $5,000. This does not include the costs and fees paid to establish my claim for ownership and payment of these coupons, or the expense I was put to in a suit in New York, and also in regard to the suit I brought in London to recover the 192 bonds of the State of Florida, nor does it include any expenses to Florida in 1871, which I was allowed, and received forty pounds from S. W. Hopkins & Co., in London.

I annex hereto as a part of my answer a paper marked Exhibit "I," which is a list of the coupons referred to, showing the number of said coupons, the number of the bonds from which taken when on, when payable, and the value of each. The whole number of coupons being 699, and the aggregate value $24,465, and these are the coupons referred to in the agreement of August 29, 1872.

T. B. CODDINGTON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, the 26 day of October, A. D. 1882, before—

LEE PHILLIPS, *Examiner.*

Fees, $40; paid by Spencer Trask, complainant.

LEE PHILLIPS, *Ex.*

48 Deposition of Thomas B. Coddington, a witness produced and sworn and examined the 18th day of February, A. D. 1879, at my office, in the city of New York, in the post office building, under and by virtue of a commission issued out of the circuit court of the United States for the northern district of Florida, in a certain cause therein depending and at issue, wherein J. Fred Schutte, Jan Piers, Adcianus Piers, and others, are complainants, and the Western Division of the Western North Carolina Railroad Company and others are defendants.

THOMAS B. CODDINGTON, of New York city, aged 64 years of age, being duly and publicly sworn on the part of the complainants, doth depose and say:

First. To the first interrogatory he saith:

Thomas B. Coddington; age, 64 years; occupation, merchant, and reside at 42 Fifth avenue, New York city.

Second. To the second interrogatory he saith:

Yes; I have heard of them in connection with this and like litigations in these Florida railroad suits.

Third. To the third interrogatory he saith:

I received and delivered the thousand bonds numbered from 3000 to 4000, inclusive, as stated in the copy of my answer which I now hand to the commissioner, and which is a copy of my original answer filed in the U. S. circuit court in that case (answer marked by the commissioner Coddington No. 1, J. A. S., Com'r). The particulars as to the receipt and delivery of these bonds are stated on pages 11 to 13, inclusive. I hand to the commissioner a sworn copy of the paper given by me to Colonel Houston at that time (paper marked by the commissioner Coddington No. 2, J. A. S., Com'r), as stated on the pages and paragraphs before mentioned.

Fourth. To the fourth interrogatory he saith:

Yes; the answer that I handed the commissioner; a copy of an answer to interrogatory; there is the answer.

Fifth. To the fifth interrogatory he saith:

I have examined Exhibit "A," and it is not an exact copy,
49 it differs in the title page, and in the printing; they substituted italics which is not in the original, and omit italics that are in the original. I am willing and do testify, as stated in the answer, I claimed to have a lien on these thousand bonds for forty thousand dollars and interest. When, in January, 1872, I was informed that 800 of these bonds had been sent to New York from London, and that the remainder were held in London, I caused a notice to be served on the holders (of the remaining bonds, about two hundred) of my lien, and forbidding them to part with the bonds. About this time I learned that John Collinson had commenced suit in London against Collins and others (Collins being a partner of Hopkins & Co.) to compel them to deliver under a contract previously made these 1,000 bonds above mentioned, with 200

more of like bonds of a previous issue. Pensacola and Mobile Railroad Company had intervened, assenting to, and requiring Collinson to take the bonds he had contracted for with Hopkins & Co., and that after a negotiation by these parties a consent decree was made, by which Collinson was to have all the bonds placed in his hands with the option to buy them, except 224 that were to be cancelled. My notice to the holders of the 200 bonds prevented the carrying out of this arrangement.

The railroad company admitted my claim of $40,000, and interest from 29 of August, 1872, and my lien on the bonds, and for this and the further consideration that I would withdraw my notice, they compromised to pay my claim and interest in cash, or failing to do so, the company would cause 192 of said bonds to be delivered to me, authorizing me to sell the same to satisfy my said debt. This agreement was in writing, and signed by the Jacksonville, Pensacola and Mobile Railroad Company, by their attorney-in-fact, C. L. Chase, and at the time of its execution C. L. Chase, L. B. Bayne, and W. G. M. Davis guaranteed in writing the faithful execution of this agreement. Copies of this agreement and guarantee and particulars of the foregoing will be found in the printed copies which I now hand to the commissioner, and append as part of my evidence (and the same is marked by the commissioner Coddington No. 3,
50 J. A. S., Com'r). Subsequently I learned that Collinson had obtained, in Dec'r, 1872, from the supreme court in New York, the said 800 bonds, Nos. 3201 to 4,000, inclusive, which were obtained by a consent, a copy of which is contained on pages 23 to 27, inclusive, of my said answer, which I have handed to the commissioner, and made a part of my answer to this interrogatory; and on the 18th of January, 1873, the said railroad company, and other parties in that court of record, admitted my said debt and lien on the 1,000 bonds herein referred to. which were delivered to Collinson; that is, 200 in London and 800 in New York. Consent, admission, and order of the court therein will be found copied at pages 28 to 32, inclusive, of my said answer. After this, 224 of these 1,000 bonds were cancelled, which left 776. Of these, 568 were placed in the Bank of England by order of the English court of chancery, on motion of the Jacksonville, Pensacola and Mobile Railroad Company. Of this 568 bonds, I received in June, 1878, by order of the said court in chancery in England,) 192 of said bonds, which 192 bonds I still have in my possession. The remaining 376 bonds are still in the Bank of England, held by order of court to the credit of the cause of Coddington *vs.* The Jacksonville, Pensacola & Mobile Railroad Company. The remainder of these 1,000 bonds I have heard from L. P. Bayne, and, perhaps, from other parties, that John Collinson had taken, against the coupons due in January, 1873, on the other bonds of a previous issue.

Sixth. To the sixth interrogatory he saith:

My said answer, down to the period to which it refers to, contains a full, true, and complete statement of my acts and dealings with said bonds, and the acts of others, so far as came to my knowledge. I do again make such answer in equity a reply to the question now

repeated to the last part of this interrogatory. I say that my previous answer to the fifth interrogatory is a full statement of what was done by myself and others in respect to these bonds, so far as I know or heard.

Seventh. To the seventh interrogatory he saith:

I was in London in 1871, and I have stated in my previous
51 answers all I knew about the bonds.

Eighth. To the eighth interrogatory he saith:

I understood, from the legal proceedings of Collinson, before referred to, that of the first issue, 2,800 bonds had been taken from Hopkins & Co., and paid for by Collinson; but I have no personal knowledge of their disposition. Of the remaining 200 bonds I understood that Collinson obtained them from the company through Chase, their attorney-in-fact, and paid for them; but I have no personal knowledge of it, the particulars being stated in the English bill of chancery (Coddington No. 3), and the answer of the company, which I hand to the commissioner,) and same marked by the commissioner Coddington No. 3–2, J. A. S. Com'r.)

Ninth. To the ninth interrogatory he saith:

No; I never heard of any such draft.

Tenth. To the tenth interrogatory he saith:

No; I have never authorized Daniel P. Holland, or any one else, to have me made a defendant in this suit, but I did authorize the said Holland, as my solicitor and counsel, to file a petition for me in said court, and a petition was filed by me and my said counsel, praying that the court would grant the prayers which are to be found on page 30, paragraph 31, of the petition filed in the case, a copy of which petition & prayer I now hand to the commissioner, (petition marked by the commissioner Coddington No. 4, J. A. S., Com'r), and which I make part of my answer to this interrogatory.

Final. To the final interrogatory he saith:

My answers and the documents I have handed the commissioner contains everything relating to these bonds, so far as I know or have heard.

52 First. To the first cross-interrogatory he saith:

My answers to direct interrogatories 5 and 6 indicate what is from my own knowledge and what I derived from others.

Second. To the second cross-interrogatory he saith:

My answer to the eighth direct interrogatory states the source of my information. I had no personal knowledge of the transaction.

First. To the first additional cross-interrogatory he saith:

I have already answered the first part of this interrogatory in my answer to the ninth direct interrogatory.

The witness here asks the commissioner to adjourn this examination till to-morrow morning at 11 o'clock a. m., so as to enable him to examine his papers for the purpose of looking them over with a view to answer this interrogatory relative to the injunction.

Examination adjourned, at the request of the witness Coddington, to Wednesday, March 19th, 1879, at 11 o'clock a. m.

WEDNESDAY, *March 19th*, 1879.

The witness, THOMAS B. CODDINGTON, continuing his answer to the first additional cross-interrogatory, saith:

I have already stated what bonds I understood were sold and what were not sold. I have referred to my papers, and I hold in my hand a certified copy of an injunction order in the case of T. B. Coddington *vs.* the Jacksonville, Pensacola & Mobile Railroad Company, being an order on motion for injunction made the 26 day of April, 1873, in the high court of justice, chancery division, in which the court doth order as follows: "This court doth order that an injunction be awarded to restrain the defendant, John Collinson, until the hearing of this cause or the fourth order of this court, from delivering to or to the order of the defendant the railroad
53 company, or to any other person or persons the bonds in the plaintiff's bill mentioned remaining in his hands without delivering 192 of the said bonds to the plaintiff," which is the only injunction I know anything about.

To the cross-interrogatories propounded by Jos. B. Stewart, solicitor for the Western Division of the Western North Carolina Railroad Company, the witness, answering, says:

First. To the first cross-interrogatory he saith:

In my answer to the third direct interrogatory I have stated fully and particularly as to my receiving and disposing of the bonds by delivering the same to Hopkins & Co., for whose account and the authority by which I acted. The receipt I gave to Houston, a copy of which I have handed to the commissioner, and which is marked Coddington No. 2, and the letter of M. S. Littlefield, Pres. of the J., P. & M. R. R. Co., and the letter of Harrison Reed, Governor of Florida, contained on pages 13 to 14 of Coddington No. 1, which is my answer in the suit before mentioned, will show what I was to do with the money if I received it, which I did not.

Second. To the second cross-interrogatory he saith:

I have already stated fully and particularly all I know or heard in relation to the disposition of these bonds. In regard to the price and terms of the sale, I was told by W. G. M. Davis the particulars of the transactions very much as stated in the interrogatory, as near as I can remember, but I know nothing of it of my own knowledge, except as I have stated in my answer to the direct interrogatories.

Third. To the third cross-interrogatory he saith:

I have already answered, in my answer to the ninth direct interrogatory, that I never heard of any such draft.

54 Fourth. To the fourth cross-interrogatory he saith:

I know nothing about the newspaper publications referred to. I was told in London by Hopkins & Co. that there was a delay in consummating the contract between Hopkins & Collinson until an expression from the supreme court of Florida could be obtained sustaining the legality of the issue of those bonds, and that after the opinion of the said supreme court had been given the sale under the contract went on.

Fifth. To the fifth cross-interrogatory he saith:

When in Florida in January, 1871, I was informed by Colonel Houston that Judge Westcott and Colonel Gamble had obtained an injunction against his sending the bonds from Florida, they, Westcott and Gamble, being stockholders in the Florida Central Railroad Company; subsequently Westcott agreed to give his consent to the bonds being sent away if he could be paid for his stock in cash $3,845.33, and Gamble agreed to give his consent on my promise to Houston to take the bonds to London, and if I received the money to pay it over to Houston for the parties who alleged to have claims that were a lien on these bonds, among which Gamble claimed fifteen thousand dollars. The particulars are stated in Exhibit Coddington No. 2, furnished by me to the commissioner. The nature of the suit or proceedings I know nothing about. I paid Westcott, as stated in paragraph 16, page 20, of my answer, marked Coddington No. 1, and I subsequently had to pay Gamble, as stated on pages 20 to 21, paragraph 18, of Exhibit Coddington No. 1, and which I here reiterate.

Sixth. To the sixth cross-interrogatory he saith:

After I had received the bonds and instructions from Littlefield, president of the road, and of Reed, Governor of Florida, the said Houston being fully advised and assenting thereto, I left Tallahassee, as stated on page 14, folios 40 & 41, of Exhibit Coddington No. 1, and which I here reiterate.

T. B. CODDINGTON.

55 Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 19th day of March, 1879.

Before—

JOHN A. SHIELDS, *Commissioner.*

[Endorsed:] Spencer Trask *vs.* The Florida Central Railroad Co. *et al.* Exhibit "A" to testimony of Thomas B. Coddington. October 25th, 1882. Lee Phillips, examiner.

56 EXHIBIT B.

SPENCER TRASK

vs.

THE FLORIDA CENTRAL RAILROAD COMPANY *et al.*

Approved as a part of the testimony of T. B. Coddington. Oct. 25, 1882.

LEE PHILLIPS, *Ex'r.*

U. S. Circuit Court, Northern District of Florida. In Equity.

THE WESTERN DIVISION OF THE WESTERN NORTH CAROLINA RAILROAD COMPANY

vs.

GEORGE F. DREW, Governor of the State of Florida, THE FLORIDA CENTRAL RAILROAD COMPANY, and others.

Answer of Thomas B. Coddington.

D. P. Holland, solicitor and of counsel.

57 Circuit Court of the United States, Northern District of Florida, at Jacksonville.

FLORIDA CENTRAL R. R. Co.
vs.
SCHUTTEE *et al.*
} 1136. Record.

To the judges of the circuit court of the United States for the 5th circuit and northern district of Florida:

The separate answer of Thomas B. Coddington to the bill of complaint exhibited against him by the Western Division of the Western North Carolina Railroad Company, in which suit George F. Drew, Governor of the State of Florida, The Florida Central Railroad Company, and others, together with him, the said Coddington, are made parties defendant.

This defendant, saving and reserving unto himself all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' bill of complaint contained; and insisting upon the several special matters in this answer set forth, as if he had plead the same, or had demurred to said bill, for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith:

58 I. That the bill should be dismissed as to him, because he says that it does not allege that this defendant is a citizen of the State of New York, but avers that he is a citizen of New York; and this defendant alleges that this allegation of citizenship is not sufficient to give the court jurisdiction of this defendant. Wherefore he prays that the bill be dismissed as to this defendant and subject to the foregoing objection to the jurisdiction of this court, and claiming the benefit thereof as if he had specially demurred to said bill.

This defendant saith:

First. That he absolutely denies all, each, and every charge of fraud or of fraudulent intent alleged against him by the complainants, and avers that the whole of the transaction, and each and every act (relative to the bonds which are the subject of this suit), were, so far as they were done by this defendant, or so far as he had any knowledge of them, and so far as this defendant was connected with them, good, honest, fair, legitimate, and lawful acts, legally and morally; and that this defendant's whole connection with these bonds were had for a good and lawful purpose, and, as this defendant then believed, for the benefit of the parties in interest; and the result, this defendant believed, would eventually be that the line of railroad would be built, to the great benefit of the people and the State of Florida; this defendant was also informed, and he believed it, and he acted upon that belief, that the State of Florida had by law authorized the Governor to exchange State bonds for the bonds of the railroad companies, and that S. W. Hopkins & Co. had sold in England State bonds that were then authorized to be issued, and

had agreed to deliver to the purchaser four millions of said State bonds at a given time, and further, that it was essential for the consummation of the contract that the bonds should be delivered as stipulated, and that Edward Houstoun would, it was supposed,
59 deliver one million of said bonds to this defendant, in trust for him, if this defendant would accept the trust, and that the receipt and delivery of this million of bonds held by Houstoun was the obstacle in the way of realizing the money from the sale of the bonds, and that if this million of bonds could be delivered in time to complete the contract of sale in London that the whole enterprise would be a success and the railroad would be speedily constructed westward as designed by the legislative authority.

This defendant supposed that he was undertaking a matter that would be a great public and corporate benefit. This defendant had full faith in these representations, and acted upon them, and was most anxious that this Florida line of railroad should be completed westward through the State of Florida. This defendant had been the good business friend of the Florida railroads; that when the Pensacola & Georgia Railroad Company was building its road this defendant sold that company (Edward Houstoun being its president) large quantities of railroad iron, amounting to more than two hundred thousand dollars, on credit, and took the notes of the company therefor, and when that company failed to pay its notes he compromised with them, and took the mortgage bonds of the company in payment at sixty cents on the dollar, and years afterwards this defendant's partner sold them, at the solicitation of Edward Houstoun, to George W. Swepson, while this defendant was in Europe, at fifty cents on the dollar. After the war this defendant again credited the company, and used all his best endeavors to assist the company and advance its credit, and gave up his coupons (and induced his friends to give up their coupons) past due, for alleged preferred stock, to the amount of over sixty thousand dollars, so as to save that railroad from bankruptcy and sale to its stockholders, and to the people of Florida. And that this defendant did this because he had entire faith in the character, honor, and integrity of Edward Houstoun, its president, and gave these past due coupons, and obtained those of his friends, relying on the representations and
60 statements of Edward Houstoun, the president, for the company, not supposing for one moment that Houstoun was deceiving this defendant, which afterwards proved to be the case. This defendant afterwards heard that the Pensacola & Georgia railroad had been sold, as the other Florida railroads were, by the trustees of the internal improvement fund, and that new companies were organized, and that Houstoun and Milton S. Littlefield were the owners of more than two-thirds of the whole line of railroad from Jacksonville westward, and that an exchange of bonds, by the State, for railroad bonds, had been authorized by law, and that these State bonds had been contracted to be sold and delivered to parties in London, and that there was no doubt of the success of the new company in being able to speedily build the Florida railroad through to Mobile, Alabama; that the obstacle in the way was the delivery

of the bonds in London in time to the purchasers, according to the contract. And this defendant agreed to assist in taking this million of dollars of State bonds to London, for this purpose, believing, as aforesaid, that it was a good and great public and corporate enterprise, and one to which he wished every success; that, with this intent and purpose, this defendant went to Florida in January, 1871, and then obtained the bonds, and afterwards delivered them to S. W. Hopkins & Co., in London, in April, 1871, by the positive and peremptory order of Edward Houstoun, for whose account, and in trust for whom, this defendant received the bonds, and also by the order and direction of Milton S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Railroad Company, and also by the order and direction of Harrison Reed, the Governor of Florida, all of which will more fully appear in this his answer hereafter in detail.

II. This defendant says that he has had to pay many thousands of dollars of his own money because he obeyed the order of the said Houstoun.

61 III. This defendant says that he never heard of these complainants, or that such a corporation existed, until long after he had delivered the bonds to Hopkins & Co., in London. This defendant charges that if these complainants had any charge or complaint against him they ought to have brought it before this time, and not wait for more than six years to bring suit against him, and then, instead of suing him at his domicile in the city of New York, bring this suit against him in Florida.

IV. This defendant says that if their bill be true, of which he knows nothing, and if Littlefield and Swepson embezzled the moneys of these complainants prior to the passage of the acts of 1869 and 1870, authorizing the bonds to be issued, as the complainants allege in their bill, that these complainants committed a gross fraud on the State of Florida and its people, and on this defendant, in not letting the embezzlement be known, so as to advise the authorities of Florida and the public and this defendant not to deal with the aforesaid parties. This defendant, so far from believing that these gentlemen were the criminals that the complainants, in this their bill allege them to be, says that George W. Swepson and Milton S. Littlefield were, prior to his receiving these bonds, represented to him to be men of capital and of good character, or this defendant would not have had any connection with them. That he did not know Swepson at all in any part of this transaction, and has never seen him, and his only knowledge of him was that he had been introduced to defendant's partner by a banker, and at Houstoun's solicitation this defendant's partner had sold Swepson the aforementioned Pensacola and Georgia first mortgage bonds prior to the sale of that road in 1869, and while this defendant was a resident of London.

That if what these complainants say about these gentlemen in their bill is true (of which this defendant has no knowledge and does not assert), this defendant says that it was the duty of

62 these complainants to have prevented them from obtaining the passage of the statutes of Florida of 1869 and 1870, by

which they obtained these public securities; that they, the complainants, should have published and declared the acts of embezzlement now in their bill of complaint alleged, instead of waiting till the securities were issued, and innocent parties and this defendant and the public of Florida had dealings with these securities, to their great injury, as this litigation shows.

V. This defendant absolutely denies that he had any knowledge of any of the illegal acts charged by these complainants against Littlefield, Swepson, or Houston, or either of them, relating to the embezzlement or fraudulent use by them, or either of them, of the moneys, securities, or other property of these complainants, as in their bill alleged. This defendant says that he did not know that there ever was such a company as these complainants, or such a corporation in existence, and never knew that either Littlefield or Swepson ever were agents or officers or in any way connected with such corporation until long after he had delivered said bonds in April, 1871, and then only by hearsay, and in years afterwards by pleadings in certain suits, this one among the number.

VI. This defendant further says that he delivered in London one thousand State bonds, numbered 3.001 to 4,000 inclusive, on the eighteenth of April, A. D. 1871, to S. W. Hopkins & Co. (as will hereafter more fully appear in his answer), and that he is informed and believes that after this defendant had delivered up the whole thousand bonds, that 800 of these identical bonds, numbered, 3,201 to 4,000, both inclusive, were afterwards, and in the year 1872, in the hands of a receiver of the supreme court of the city and
63 of the State of New York, tied up by order of that court, in two actions then pending, in each of which this complainant, the western division of the Western North Carolina Railroad Company, was a party defendant.

And this defendant is informed and states, as will more fully appear by reference to "Schedule I" of complainants' exhibits attached to this bill, that these complainants assisted to procure, and did consent to, and did thereby obtain an order, on the 6th day of December, 1872, by which John Collinson did receive 800 of these identical bonds, being numbered 3201 to 4000, inclusive, and carried the same to England to sell, according to the understanding and agreement between the said North Carolina Railroad Company and the other parties to that suit; and that if Collinson should buy the bonds, the proceeds were to be divided amongst certain parties. And these complainants were, of the proceeds of these identical bonds, to receive the sum of two hundred thousand dollars, according to a consent decree obtained in said court on the —— day of December, A. D. 1872, which will more fully appear by reference to the consent and stipulation made by complainants, and a copy of this order filed with this answer and marked Nos. 1 and 2. This defendant avers the facts to be that these complainants caused eight hundred (800) of these bonds, after this defendant had defendant had delivered them in London to S. W. Hopkins & Co., to be taken from a receiver of a court in New York, where they then were, in December, 1872, and sent to England for sale. And this defendant says

that these complainants are estopped from denying that they aided and assisted, and attempted to have these bonds sold long after this defendant had parted with the said bonds; and that it is a gross wrong on this defendant to have such charges brought against him by these complaints relative to these bonds.

VII. This defendant prays that the copies of the stipula-
64 tions and consents of these complaints, filed herewith, marked No. 1 and 2, may be taken as a part of this his answer, and he says that when these orders were obtained he was not a party, and had no knowledge thereof; but subsequently, on hearing thereof, in the year 1877, he applied to said court and was made a party thereto, and filed his answer in 1877, and in his answer insisted that the lien of this defendant therein admitted by these complainants and the Jacksonville, Pensacola and Mobile Railroad Company had priority and was superior to all other liens for the payment of the debt therein admitted to be due; and this defendant says that the said suit is still pending and undecided in the said court in the said city and State of New York.

VIII. This defendant further says that he has been informed and believes, and so charges, that these complainants, on or about the 10th of April, A. D. 1870, and prior to the amendatory statute of 1870, (by the authority of which these bonds were issued), entered into a written agreement with the said Milton S. Littlefield, and George W. Swepson, by which it was agreed that the said Littlefield should procure bonds of the State of Florida by legislation, substantially, as was afterwards done by the passage of the amendatory act of 1870; and that he, Littlefield, should thus obtain bonds of the State of Florida in exchange for railroad bonds; and that the State of Florida bonds thus obtained should be sold and the proceeds applied to the following purposes, to wit: One-half was to be paid to these complainants for the debts due by Littlefield and Swepson to these complainants, and the residue should be retained by the Jacksonville, Pensacola and Mobile Railroad Company. And that under and in accordance with this unlawful and fraudulent contract on the people of Florida, and the minority stockholders of the Florida railroad companies, and this secret agreement, the said Littlefield subsequently caused and procured the passage of the act of 1870,
65 which authorized the issue and exchange of these bonds, all of which was then unknown to this defendant, and was kept secret among the parties to the said agreement. And defendant says that these complainants, by the said agreement made the said Littlefield their agent, and that these complainants are now estopped from denying the legality of the issue and exchange of these bonds; and this defendant asks that he may have the benefit of the decision of Mr. Justice Bradley, heretofore made in this case, and the judgment of this court, that for and on account of this agreement these complainants are estopped, as in the said judge's opinion then declared.

IX. This defendant further says that he is informed, and believes, that in accordance with a settlement made between these complainants and the said M. S. Littlefield, the complainants received of the

proceeds of the sale of State of Florida bonds, issued under the act of 1870, to the Jacksonville, Pensacola & Mobile Railroad Company, the sum of fifty thousand dollars, at one time, from S. W. Hopkins & Co., the fiscal agents of the said J., P. & M. R. R. Co. And this defendant avers that he believes that these complainants are justly chargeable with the injuries that resulted from the alleged improper use of those bonds and their proceeds, and the failure to build the railroad westward, and this defendant says that there can be no doubt that if the stockholders or the people of Florida, or the Legislature, had known that when the Legislature passed the acts of 1869 and 1870, that the bonds thus authorized to be issued were to be sold and the proceeds applied to repaying the embezzlement of the moneys and securities of this North Carolina corporation by Littlefield, Swepson, or by any other person—that the Legislature would have refused to pass said acts, and if passed, that no business man would have had anything to do with either the said persons or the bonds. And this defendant charges that the complainants have in their bill shown, that for and on account of their concealment
66 of the alleged acts and defalcations of Littlefield and Swepson (if what these complainants say be true), they have debarred themselves of the relief prayed for in their said bill, and have committed a gross wrong on this defendant, and the public, and especially the people of Florida, by concealing the same until long after the legislation was had, and the bonds issued, and dealt with by this defendant and other innocent parties.

X. This defendant further says that the Jacksonville, Pensacola & Mobile Railroad Company is indebted to him in the sum of forty thousand dollars, with interest thereon, which is still due and unpaid; and that this defendant has a lien on 568 of these bonds for the payment of said sum of money. That these complainants and the said railroad company are estopped of record from denying the aforesaid claim and lien of this defendant, because he says, that in the said suit in the supreme court of the State of New York, at a special term thereof, held in the city of New York, in said State, on the 18th day of January, A. D. 1873, these complainants and the said railroad company appeared before the Hon. George C. Barrett, justice, then presiding in said court, and then hearing the said suit of John Collinson, plaintiff, against S. W. Hopkins & Co., The Jacksonville, Pensacola & Mobile Railroad Company, the Western Division of the Western North Carolina Railroad Company, and others, being defendants; that these complainants and said railroad company, with others, did then and there, of record in said suit, among other things admit, and in said cause did in writing declare that this defendant, "Thomas B. Coddington, had on the said 29th day of August, A. D. 1872, a claim and lien, to the amount of forty thousand dollars, and interest from the 29th day of August, 1872, on one thousand of the said twelve hundred bonds so delivered to the said John Collinson upon the footing of the said agreement with
67 him, and the said decree of the said court of chancery, and such lien of said Thomas B. Coddington, attached and still attaches to the proceeds, or so much thereof as may be necessary, of

the said one thousand bonds, and he is entitled to be paid out of such proceeds of said sum of forty thousand dollars United States currency and interest as aforesaid."

And this defendant says that these complainants are of record forever estopped from denying the lien and claim of this defendant as is above set forth, and on the 13th day of January, 1873, by them admitted to be a lien on said bonds, from the 29th day of August, A. D. 1872.

XI. This defendant says that on the 12th day of January, A. D. 1871, he gave Edward Houstoun the written instrument, marked "Schedule F." That although by the said instrument it appears that Houstoun delivered and that this defendant received one thousand Florida Central Railroad Company first mortgage bonds, payable to the State of Florida, for one thousand dollars each; yet this defendant alleges and says that the following are the actual facts:

That on the 11th day of January, Houstoun, taking a servant with him, and accompanied by this defendant, went to the office of Col. Robert H. Gamble, and received from Gamble the one thousand railroad bonds described in "Schedule F."

That thereupon Houstoun, and this defendant, and Houstoun's servant, carrying the bonds, went immediately to the Governor's office in the capitol, and the said one thousand railroad bonds were then and there given to Harrison Reed, Governor of Florida, in the said executive chamber, and the said Governor Reed then delivered therefor one thousand State of Florida bonds of the face value of one thousand dollars each, and numbered from 3001 to 4000, inclusive, which said bonds this defendant understood were issued
68 under the statutes of 1869 and 1870, described in complainants' bill.

That Houstoun directed his servant to take the package of State bonds and carry them to this defendant's room in the hotel; that Houstoun and this defendant, together with the said servant then carrying the bonds, went to the hotel, where the State bonds were by Houstoun left with this defendant.

That this defendant the next morning, at Houstoun's request, delivered to Houstoun the paper marked "Schedule F," and the said Littlefield, as president of the J., P. & M. R. R. Co., gave his full authority and assent thereto, and signed the same in his official capacity.

And this defendant says that in the manner aforesaid he did receive the said one thousand State of Florida bonds, numbered 3001 to 4000, and that the same were received by the authority, assent, and approval of the said president of the said Jacksonville, Pensacola and Mobile Railroad Company, and in trust and for account of said Edward Houstoun.

And this defendant says that the disposition he was to make of the said bonds and their proceeds, if any were received by him, is set out in said Schedule F.

That the Governor told this defendant, in Houstoun's presence, in the executive chamber, at the time of the delivery of the said

State bonds, for this defendant not to take the bonds out of the State until the Governor had made arrangements for the payments of certain moneys to the State of Florida with the said president, Littlefield.

That, in accordance with this direction of the Governor, as aforesaid, this defendant remained with the bonds in Tallahassee until he received the following written instructions, which are in the words and figures following, to wit:

69 "PRESIDENT'S OFFICE,
"JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD CO.,
"TALLAHASSEE, FLA., *Jan. 12th*, 1871.

"T. B. CODDINGTON, Esq.,
"*Tallahassee, Florida.*

"MY DEAR SIR: I have the honor to give you the following instructions in relation to the bonds, or the proceeds thereof, which you have received from the Governor in exchange for railroad bonds:

1st. "The bonds will be delivered to the parties in London, England, who have purchased the four thousand bonds issued in aid of the Jacksonville, Pensacola and Mobile railroad, and collect the pay therefor.

2d. "You will pay the following-named parties, viz: Edward Houstoun, $163,000; M. D. Papy, $16,000; Judge Wescott, $5,000; Gamble, $15,000; Col. J. P. Sanderson, $57,000. I state the amounts not exactly, but about the sums, as you have them exact, upon each party delivering to me, or to my order, all stock, bonds, coupons, notes, drafts, acceptances, or whatever the said — is to pay for; but should any of the parties whose names are mentioned above refuse to receive the said amounts after it had been offered to them, and after Col. Houstoun has been paid, then the said amounts shall be paid to me or to my order.

3d. "The balance of the money will be placed to the order of his excellency, Harrison Reed, Governor of Florida, to pay indebtedness to the State."

Truly yours,
M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

P. S.—"This letter is so far modified as to conform to the letter or receipt given by me to Edward Houston and approved by me.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

"T. B. CODDINGTON, Esq.:

"You will please place to my credit in the National Trust
70 Company of New York City the amount called for in the above arrangement, either by wire or letter, and oblige,

"HARRISON REED,
"*Governor of Florida.*"

And this defendant, having received the above instructions from the said President Littlefield, and the Governor of Florida and the

said Houstoun being fully advised thereof and assenting thereto, this defendant, having first personally bade good-bye to all the parties, was making his arrangements to return to New York by the railroad from Tallahassee, and so informed the president of the road; thereupon President Littlefield directed this defendant to go by the way of Thomasville and Charleston, and the said Littlefield informed this defendant that he (President Littlefield) had provided a carriage, and that for the safety of the bonds he, Littlefield, would send him by his carriage (accompanied by his secretary) to Thomasville, Georgia, where this defendant could take the rail, and that his secretary, for safety to the bonds, would accompany this defendant as far as Charleston. That, as directed by the said Littlefield, this defendant went in the said carriage to Thomasville, and thence by rail to New York, and that the secretary of the said Littlefield did accompany this defendant as far as Charleston from Tallahassee.

And that after the arrival of this defendant in New York he proceeded by the first steamer to Europe, and reached the city of London with the bonds as speedily as practicable and without delay.

That this defendant, having thus received the said State bonds on the 11th day of January, A. D. 1871, retained and kept them in London, England, until the (18th) eighteenth day of April, A. D. 1871, because he could not get the money for them, when this defendant, having been peremptorily ordered by the said Edward Houstoun, did on said eighteenth day of April, A. D. 1871, deliver the said one thousand State bonds, numbered 3001 to 4000, inclusive, to S. W. Hopkins & Co., of London, England.

71 And this defendant says that as aforesaid he received said one thousand bonds, No. 3001 to 4000, on the 11th of January, A. D. 1871, and delivered them as ordered on the 18th day of April, A. D. 1871, in London, to S. W. Hopkins & Co. And this defendant says the orders and directions to him to deliver the said 1,000 bonds are as follows:

That he received in London the following message by cable from Edward Houstoun:

"*Atlantic Cable Message.*

"STATION FROM SAVANNAH.

"From E. HOUSTOUN, to CODDINGTON, care HOPKINS, *London:*

"Deliver bonds to Hopkins. Everybody protected."

And this defendant also received the following from Edward Hopkins:

"SAVANNAH, GA., *April 11th*, 1871.

"T. B. CODDINGTON, Esq., *London.*

"DEAR SIR: I hereby authorize and request you to deliver to Messrs. S. W. Hopkins & Co., of London, the one thousand Florida State bonds of one thousand dollars each, received by you from the State of Florida in exchange for a like number and amount of the bonds of the Florida Central Railroad Company, the same having

been delivered to you by me, to be held in trust, as per your receipt dated January 11, 1871, which I now surrender herewith, I having no further lien on or against either of the above-mentioned bonds.

"Yours, respectfully,

"E. HOUSTOUN."

72 Also the following:

"TALLAHASSEE, FLA., *April 6th*, 1871.

"SIR: I hereby recall my letter of instruction to you, dated January 12, 1871, and also all instructions subsequently given, and now direct you to deliver to Messrs. S. W. Hopkins & Co., of 58 Old Broad street, London, the one thousand bonds of one thousand dollars each, to wit, one million dollars, of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, now held by you as trustee, whenever Edward Houstoun, Esq., shall authorize and direct you so to do, imposing upon you the single duty of procuring from Messrs. S. W. Hopkins & Co. their signature to the written agreement entered into with you, which is intended to fix upon them the responsibility of carrying out my original order and relieving you therefrom.

"M. S. LITTLEFIELD,
"*Pres. J., P. & M. R. R. Co.*

"To T. B. CODDINGTON, Esq."

And on the face of this instrument and across the writing was the following:

"I hereby approve of and ratify this order.

"HARRISON REED,
"*Governor of Florida.*"

"I do hereby authorize and request T. B. Coddington, Esq., to deliver the within mentioned bonds to S. W. Hopkins & Co., of London, as I have no further lien against them.

"E. HOUSTOUN."

Which was communicated to me by my firm in New York prior to the cable from Houstoun ordering me to deliver the bonds.

73 XII. This defendant further says that the said S. W. Hopkins & Co. had also a house in New York, as well a- in the city of London, and were the same firm and composed of the said parties; and that the said S. W. Hopkins & Co. were then the fiscal agents of the State of Florida, and of the said Jacksonville, Pensacola and Mobile Railroad Company; and that as aforesaid this defendant, as thus directed, did deliver said one thousand bonds, number 3,001 to 4,000, inclusive, to said S. W. Hopkins & Co., in London, and obtained their signature, as in said instructions directed; that having delivered the said bonds on the 18th of April, as directed by cable from Houstoun, that afterwards the said S. W. Hopkins & Co. sent a message by cable to their New York house, notifying them of the receipt of the bonds, and thereupon the New York house of S. W. Hopkins & Co. sent the following letter to the partner of this defendant,

and also sent Mr. Nichols the original receipt (schedule F of complainants' bill), which this defendant had given to Houstoun as aforesaid, and also Houstoun's written authority, dated April 11th, to deliver the bonds, all of which the defendant was advised of by his said partner as aforesaid.

That acknowledgement and letter is as follows:

"S. W. HOPKINS & Co., 71 BROADWAY, NEAR WALL STREET,
NEW YORK, *April 19th*, 1871.

"GEO. L. NICHOLS, Esq.

"DEAR SIR: A cablegram received this morning from our London house announces that Mr. Coddington has delivered the bonds. Enclosed please find Mr. Coddington's original receipt to Mr. Houstoun, dated Tallahassee, January 11th, 1871; also Col. Houstoun's authority for the delivery. Please acknowledge receipt of these documents. We should be glad to know if you have anything from Mr. Coddington confirming our despatch.

"Very truly yours,

"S. W. HOPKINS & CO.,
"Per L. L. SPRING."

74 XIII. This defendant further says that these bonds were delivered by the order of the Florida Central Railroad Company, and that the exchange of the railroad bonds for the said State bonds was made by the authority of the said Florida Central Railroad Company.

And that at a stockholders' meeting of the Florida Central Railroad Company, duly assembled in accordance with law, and after this defendant had received the said State bonds, as above stated, the following resolution was offered at said stockholders' meeting, to wit:

"Resolved, That Edward Houstoun do place the bonds referred to in the preamble and resolutions of the stockholders, adopted June 20th, 1870, in the hands of S. W. Hopkins & Co. for the purpose mentioned in said resolutions, subject to the same exceptions as therein expressed, with respect to the proportion thereof, applicable to the stock owned by other parties, and according to the same terms therein mentioned."

And this defendant has been informed and believes that said resolution was passed by a large majority of said capital stock, and was and is of lawful and binding force on said railroad company, and on all and every of its stockholders, and this resolution authorized the exchange and delivery aforesaid.

XIV. This defendant further says that the complainants are estopped from denying the legality of the said exchange of bonds, or of their delivery to said S. W. Hopkins & Co., because he says that, as will appear by an examination of the case in the supreme court of the State of Florida, wherein the Florida Central Railroad Company and others were appellants and the State of Florida and others were respondents, and in which case the legality and validity of the issue of the said railroad bonds and the exchange of the State bonds therefor, and the obligation of the said railroad company therefor, was in-

volved, the said supreme court of Florida did decide that after
75 this defendant had received the said bonds that the foregoing resolution was adopted at a stockholders' meeting, and the supreme court did further, in said case, declare and decide that "the resolution was adopted. The bonds here referred to are the bonds now held by the State. So far as the exchange of these bonds by the company is concerned here is its express authority given for it, and that must be the end of the matter."

This defendant says that the same will be found in the XV volume of Florida Reports, at pages 709 and 710, and that the same is a public record, and published by the authority of the State of Florida, to which this defendant beg leaves to refer.

And this defendant says, as advised by counsel, that these complainants to this bill have had all their rights adjudicated in the aforesaid case, as to the exchange, issue, and delivery of these bonds, and that they are estopped from denying the same, if the complainants are held to be the legal or equitable stockholders of the Florida Central Railroad Company.

This defendant therefore alleges, from the facts as before stated as to receiving these bonds, and as to his delivering them, that as soon as he did, in accordance with the aforesaid instructions, deliver them to said S. W. Hopkins & Co., of London, there was no further obligation or liability resting upon this defendant, as he obeyed the instructions of all the parties interested, as heretofore shown.

XV. This defendant further says that he never paid any moneys to John P. Sanderson nor to Flagg nor to M. D. Papy, but that he understood and was informed that they were paid the said sums specified in Schedule F, by S. W. Hopkins & Co. And that this defendant never paid any money to Governor Reed, nor to any other person except to Houstoun, and as hereinafter mentioned to Judge Wescott.

76 XVI. That Judge Wescott insisted on selling his stock, and that this defendant gave the said Wescott his draft on T. B. Coddington & Co., of New York, before this defendant left Florida, for the price agreed upon, and that the firm of this defendant paid the said draft, but that this sum which defendant paid Judge Wescott for his stock, $3,845.23, was refunded to defendant's firm by S. W. Hopkins & Co. And this defendant was subsequently informed that Hopkins & Co., by order of M. S. Littlefield, turned over the certificate of Judge Wescott's stock to said Littlefield.

XVII. That this defendant in New York, on the 17th January, 1871, received from S. W. Hopkins & Co. $5,000 for Edward Houstoun, and this defendant paid out the said $5,000 by Houstoun's order; and that in 1871 this defendant received for the said Edward Houstoun from S. W. Hopkins & Co., of London, $48,955, which this defendant sent to Earle & Perkins for the said Houstoun, and was duly received by the said Houstoun, making in all the sums of $53,955, which this defendant received from S. W. Hopkins & Co., and paid to Edward Houstoun, prior to this defendant delivering up said one thousand bonds. This defendant turned over and delivered the entire said one thousand bonds to said S. W. Hopkins &

Co., on the said 18th April, A. D. 1871. That the aforesaid sums of money were not derived from the proceeds of said bonds Nos. 3001 to 4000, inclusive.

XVIII. This defendant further says that he received no benefit whatever from the said transaction relating to these bonds; but, on the contrary, that he has had to pay out in cash many thousand dollars, by reason of his turning over the said bonds to S. W. Hopkins
77 & Co., by order of the said Edward Houstoun, whose trustee and agent this defendant was; and that the said Houstoun received the benefit, and this defendant was thereby injured, as will more fully appear.

That Robert H. Gamble brought suit against this defendant in the court of common pleas for the city and county of New York for the injury resulting to him, Gamble, by this defendant delivering said one thousand bonds to S. W. Hopkins & Co., of London, as aforesaid, without this defendant having first paid the said Gamble the moneys as set forth in the "Schedule F." This defendant employed able and skilful counsellors and attorneys to defend said suit, and did defend the same with all lawful measures; that the suit was tried by the court and a jury, and a verdict was rendered against this defendant in due form of law in favor of the said Gamble, on the 27th day of April, A. D. 1876, for the sum of $21,553.33, and costs, and $250 allowance for counsel fee; that on the 19th of May, A. D. 1876, this defendant settled and fully satisfied the said verdict, upon an agreement between the said Gamble and himself, in full satisfaction, for the sum of $15,750 cash in hand paid by this defendant out of this defendant's own moneys, and that this defendant has had to expend of his own moneys the further sum of about three thousand dollars.

XIX. That Houstoun and Littlefield were the owners of about two-thirds of the capital stock of the Florida Central Railroad Company, and that Littlefield was also the owner of about two-thirds of the stock of the Jacksonville, Pensacola & Mobile Railroad Company.

XX. This defendant further says that in this whole transaction relating to these one thousand State of Florida bonds, No. 3001 to 4000, inclusive, this defendant was acting as the agent and trustee of Edward Houstoun, and not of any other party, State, corpora-
78 tion, or individual; and that Edward Houstoun procured an order from the stockholders of the Florida Central Railroad Company, in due and legal form, directing him, Houstoun, to deliver said State bonds, number 3001 to 4000, inclusive, to S. W. Hopkins & Co., of London, and that the delivery of said State bonds by this defendant to the said S. W. Hopkins & Co., of London, was in accordance with the aforesaid resolution, this said defendant then acting as the agent of the said Houstoun, and delivering said State bonds by Houstoun's express direction, as aforesaid.

XXI. This defendant denies that the complainants were, or are, authorized by their charter to acquire or own any stock in any railroad company in the State of Florida, or to acquire any capital

stock of any corporation, or any other property in the State of Florida.

XXII. And this defendant, being now fully answered, prays to be hence dismissed, with his costs in this behalf most wrongfully sustained.

D. P. HOLLAND,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Before me, John A. Shields, commissioner of the circuit court of the United States for the southern district of New York, personally appeared Thomas B. Coddington, one of the defendants in the above suit, who, being duly sworn, on oath says that the facts stated as of his own knowledge in the above answer are true, and those stated on informatien he believes to be true.

T. B. CODDINGTON.

Sworn to and subscribed before me, this 18th day of Oct., A. D. 1877.

(Signed) JAMES S. SHIELDS,
Commissioner of the Circuit Court of the United States for the Southern District of New York.

79 EXHIBIT No. 1.

At a special term of the supreme court of the State of New York, held at the court-house in the city and county of New York on the sixth day of December, A. D. 1872.

Present: The Hon. William H. Leonard, justice.

JOHN COLLINSON, Plaintiff,
against
SIDNEY W. HOPKINS, ROBERT J. CARPENTER, and FRANK H. COLLINS, composing the firm of S. W. Hopkins & Co.; The Jacksonville, Pensacola and Mobile Railroad Company, The Western Division of the Western North Carolina Railroad Company, Samuel D. Babcock, Joseph Stuart, D. G. Ambler, Francis H. Flagg, and Converse L. Chase, Defendants.

80 JOHN S. REQUA, Plaintiff,
against
AARON BARRETT, THE JACKSONVILLE, PENSACOLA AND MOBILE RAILroad Company, Lawrence P. Bayne, Henry J. Rogers, Milton S. Littlefield, James G. Gibbs, Calvin Littlefield, John Doe, Richard Roe, Edward Houston, George W. Swepson, Robert B. Swepson, The First National Bank of Knoxville, Tennessee, John T. Dewees, David J. Pruyn, The Western Division of the Western North Carolina Railroad Company; Nicholas W. Woodfin, W. G. Candler, W. T. Welsh, William H. Rollins, James L. Henry, commissioners appointed by an act of the Legislature of North Carolina; E. C. Burrass, John B. Clark, D. G. Ambler, F. H. Flagg, C. L. Chase;

Sidney W. Hopkins, Robert J. Carpenter, Frank H. Collins, forming firm of S. W. Hopkins & Co.; John Collinson, George J. Haven, receiver (leave of the court having been obtained to sue said receiver), Defendants.

An application having been made on the part of the plain-
81 tiff in the first above-entitled action, upon an order to show cause, made herein, and bearing date the fourteenth day of November instant, for leave to file a supplemental complaint, and for an order directing the receiver in this action to deliver the bonds in said supplemental complaint mentioned, now in the hands of the said receiver, to the plaintiff, upon the footing of the agreement set forth in said complaint:

And an application having been made in the said first above-entitled action on the part of the plaintiff in the second above-entitled action, upon a petition accompanied by an order to show cause, made the twenty-first day of November, 1872, for an order requiring the plaintiff in the first above-entitled action, and the receiver not to part with the possession of the said bonds until the determination of the second above-entitled action:

Now, on reading and filing the said orders to show cause respectively, and the affidavits and papers thereto annexed, and on reading and filing consent to the entry of this order, signed by the attorneys for all the parties who have appeared in the first above-entitled action, and by the attorneys for the plaintiff in said second above-entitled action, it is now ordered—

First. That the plaintiff have leave, and leave is hereby given him, to file and serve the supplemental complaint, of which a copy is annexed to the said order to show cause of November 14th, 1872.

Second. It is further ordered that George J. Haven, the receiver in the first above-entitled action, forthwith deliver or cause to be delivered to the said plaintiff the eight hundred bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola and Moblie Railroad Company, now in his hands, to be dealt with by the said plaintiff upon the footing of the agreement between Converse L. Chase, of the first part, the said Converse L. Chase and Francis H. Flagg, of the second part, and John Collinson, of the third part, dated the twenty-ninth day of August, one thousand eight hundred and seventy-two, and the decree of the court of chancery,
82 Great Britain, made in the suit of Collinson *vs.* Collins and The Jacksonville, Pensacola and Mobile Railroad Company *vs.* Collinson, copies of which agreement and decree are set out in said supplemental complaint, the plaintiff's option to purchase said bonds under said decree to be extended to the month after the date of actual shipment; this modification of the provisions of said decree or the receipt by said plaintiff of said bonds under this order in no way or manner to affect the rights or obligations of either of the parties to said agreement and decree thereunder, or to operate as a waiver of any default thereunder (this order as to the receiver to take effect upon the payment to him of one thousand dollars on account of his fees as such receiver, and also the legal

fees of the New York Guaranty and Indemnity Company, the depositories of the said receiver in respect of said bonds for the custody thereof, the amount of the said receiver's compensation to be adjusted hereafter); and that said plaintiff, after the cancellation of the bonds to be cancelled under said agreement and decree, and the deduction of the amounts which, under the said agreement and decree the said Collinson is authorized to make, including provision for future interest on the bonds of the issue to which said eight hundred bonds belong, as provided for in said agreement and decree, deposit the surplus moneys resulting from the sale of said bonds in the National Trust Company, in the city of New York, to be used and disposed of subject to the further order of this court, to be made in the said first above-entitled actions upon notice to the attorneys for all the parties who have appeared therein, and to the plaintiff in the said second above-entitled action, and that the said proceeds so deposited stand in the place of the bonds themselves, subject to the same rights and liens, if any, on the part of either or any of the parties to either of said actions now existing as against said bonds.

Enter. WM. H. L., *J. S. C.*

83 We consent to the entry of the above order.

SEWELL & PIERCE,
Attorneys for Defendants, Sidney W. Hopkins, and others.

SEWELL & PIERCE,
Attorneys for Plaintiff, John L. Requa.

ALGERNON S. SULLIVAN,
Attorney for the Western Division of the Western North Carolina R. R. Co.

MARTIN & SMITH,
Att'ys for Joseph Stuart and Samuel D. Babcock, Def'ts.

HORACE BARNARD,
Att'y for Jacksonville, Pensacola and Mobile R. R. Co., Def't.

HORACE BARNARD,
Att'y for D. G. Ambler, Francis H. Flagg, and Converse L. Chase, Def'ts.

BARLOW, LAROCQUE & McFARLAND,
Att'ys for Plaintiff in first above-entitled action.

Endorsed: Filed Dec. 6, 1872.

STATE OF NEW YORK, } *ss:*
City and County of New York, }

I, Henry A. Gumbleton, clerk of the said city and county of New York, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original order on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this twelfth day of October, 1877.

[L. S.] HENRY A. GUMBLETON, *Clerk.*

J. F. M.

84 EXHIBIT No. 2.

At a special term of the supreme court of New York, held at the court-house in the city and county of New York, on the 18th day of January, 1873.

Present: Hon. George C. Barrett, justice.

JOHN COLLINSON, Plaintiff,
ag'st
SIDNEY W. HOPKINS, ROBERT J. CARPENTER, and FRANK H. COLLINS, composing the firm of S. W. Hopkins & Co.; The Jacksonville, Pensacola and Mobile Railroad Company, The Western Division of the Western North Carolina Railroad Company, Samuel D. Babcock, Joseph Stuart, D. G. Ambler, Francis H. Flagg, Converse L. Chase, and Lawrence P. Bayne, Defendants.

Whereas an order was duly entered on the 6th day of December, 1872, in the above-entitled action, by consent of all parties who appeared therein, to which order reference is hereby made;

And whereas, in and by said order, it was provided that John Collinson, plaintiff, shall deposit the surplus moneys resulting from the sale of the bonds mentioned in the said order, in the National Trust Company, in the city of New York, to be held and disposed of subject to the further order of this court to be made in this action, on notice to the attorneys for all the parties who appeared therein,
85 and John L. Requa in the action secondly mentioned in the said order, and the said proceeds so deposited stand in place of the said bonds themselves, subject to the same rights and liens, if any, on the part of either of any of the parties in either of said actions, now existing against said bonds;

And whereas by another order duly entered in this action on the 27th day of December, 1872, it was further ordered that the said order bearing date the 6th day of December, 1872, directing a delivery to the plaintiff by the receiver of the bonds therein mentioned be, and the same was thereby modified by substituting the New York State Loan and Trust Company as the depository of the surplus proceeds of the bonds to be sold in place of the National Trust Company in the city of New York, mentioned in said order;

And whereas it is admitted by the parties who consent to the entry of this order that I and by a certain agreement bearing date the 17th day of June, 1872, between the said Jacksonville, Pensacola and Mobile Railroad Company of the first part, L. P. Bayne & Co. and L. P. Bayne of the second part, Sidney W. Hopkins and others of the third part, Francis H. Flagg and Converse L. Chase, trustees, &c., of the fourth part, and Henry J. Rogers of the fifth part, it was, among other things, agreed that the claim of said Lawrence P. Bayne against the said Jacksonville, Pensacola and Mobile Railroad Company was thereby admitted and adjusted at the sum of one hundred and fifty thousand dollars, and interest; and that the said Lawrence P. Bayne had, and shall have a lien upon the twelve hundred eight per cent. Florida bonds mentioned in the pleadings in this action, for the amount of his said claim of one hundred and

fifty thousand dollars, and interest from the said seventeenth day of June, 1872;

And whereas it is in like manner admitted by the said parties that there is now due and owing to the said Lawrence P. Bayne, on his said claim, and on his said lien on the said bonds, the
86 sum of ninety-six thousand six hundred and fifty dollars, paper currency of the United States, with interest thereon from the said 29th day of August, 1872;

And whereas it is in like manner admitted by the said parties that Thomas B. Coddington had, on the said 29th day of August, 1872, a claim and lien to the amount of forty thousand dollars, and interest from the 29th day of August, 1872, on one thousand of the said twelve hundred bonds so delivered to the said John Collinson, upon the footing of the said agreement with him, and the said decree of the said court of chancery, and such lien of said Thomas B. Coddington attached and still attaches to the proceeds, or so much thereof as may be necessary of the said one thousand bonds, and he is entitled to be paid out of such proceeds said sum of forty thousand dollars United States currency, and interest as aforesaid;

And whereas it is in like manner admitted by the said parties that by the said trust deed or indenture, duly made in the State of Florida, between the said Jacksonville, Pensacola and Mobile Railroad Company of the first part, and Francis H. Flagg, D. G. Ambler, and Converse L. Chase of the second part, and bearing date the second day of October, 1871, the said parties thereto of the first part transferred and assigned to the said parties thereto of the second part, among other things, the proceeds of all the said eight. per cent. Florida bonds, and to be applied as provided for in the said indenture or trust deed, as will more fully appear by reference to the same;

And whereas it is in like manner admitted by the said parties that the said Chase and the said Flagg alone accepted the trust reposed in them under and in virtue of said indenture or trust deed, and the other trustee therein named, D. G. Ambler, disclaimed and declined to accept the said trust, and the same devolved on the said Flagg and the said Chase; and whereas the said Francis H. Flagg recently died, leaving the said Converse L. Chase sole surviving trustee under and in virtue of the said indenture or trust
87 deed, and he and the said Flagg during the lifetime of the said Flagg were entitled, and the said Chase ever since the death of the said Flagg had been entitled as such trustee to all the proceeds of said twelve hundred bonds, subject, nevertheless, less, to the aforesaid lien of the said Lawrence P. Bayne for the said balance due him as aforesaid, and subject to the said lien of the said Thomas B. Coddington as aforesaid;

And whereas, by an order or decree heretofore entered in this action on the 27th day of December, 1872, it was ordered, adjudged, and decreed, as between all the parties who consented to the entry of said decree, that two hundred thousand dollars be paid to the defendants, the Western Division of the Western North Carolina Railroad Co., out of the first proceeds of said bonds to be paid to the said

Trust Company, after first providing for the payment of the balance of the receiver's fees in this action, adjusted at the sum of nine thousand dollars:

Now, therefore, in consideration of the premises, and on the consent and stipulation of Horace Barnard, Esq., attorney for the defendants, the Jacksonville, Pensacola and Mobile Railroad Company, and Converse L. Chase, surviving trustee as aforesaid, and of Algernon S. Sullivan, Esq., attorney for the defendants, the Western Division of the Western North Carolina Railroad Company, and for the defendant, Lawrence P. Bayne, it is ordered, as between all of the said parties consenting and stipulating as aforesaid, that the said Thomas B. Coddington had, and still has, a lien on the proceeds of the said one thousand bonds for the said sum of forty thousand dollars, paper currency of the United States, with interest as aforesaid, subject, nevertheless, to the payment of the balance of the said receiver's fees, adjusted as aforesaid, and also subject to the payment in the first place of the said sum of two hundred thousand dollars to the said Western Division of the Western North Carolina Railroad Company. And it is further ordered that, as between all of the said parties consenting and stipulating as aforesaid, that
88 the said Lawrence P. Bayne had, and still has, a lien on the said twelve hundred bonds and proceeds, to the amount of the said balance of ninety-six thousand six hundred and fifty dollars, and interest as aforesaid, subject, nevertheless, to the payment of the said balance of the said receiver's fees, adjusted as aforesaid, and to the payment, as hereinbefore mentioned, to the Western Division of the Western North Carolina Railroad Company. And it is further ordered that, as between all the said parties consenting and stipulating as aforesaid, the said Converse L. Chase, as such surviving trustee, is the owner of and entitled to receive all of the residue of the said proceeds. And it is further ordered that this order is made without prejudice to the rights of any party to this action who has not expressly consented in writing to the entry thereof, and also without prejudice to the rights of John L. Requa, the plaintiff in the action secondly mentioned in the order of the 6th of December, above referred to.

(Endorsed:) "Filed Jan'y 18, 1873."

A copy. CHAS. E. LOEW, *Cl'k.*

We consent to and stipulate for the entry of the above order. Dated New York, January 18th, 1873.

(Sig.) HORACE BARNARD,
Att'y for J., P. & M. R. R. Co., and C. L. Chase, Surv., &c., Trustee.
ALGERNON S. SULLIVAN,
Att'y for Western Division of the Western North C. Railroad Co., and for Lawrence P. Bayne.

89 EXHIBIT C to testimony of Thomas B. Coddington, Oct. 25, 1882. L. Phillips, Ex'r. Spencer Trask *vs.* Florida Railroad Company *et al.*

Copy.

Circuit Court of the United States, 5th Circuit, Northern District of Florida. In Equity.

December Term, A. D. 1877, at Jacksonville.

THE WESTERN DIVISION OF THE WESTERN NORTH CAROLINA RAILROAD COMPANY, Complainants,

vs.

GEORGE F. DREW, Governor of the State of Florida, and GEORGE F. Drew, Governor; Columbus Drew, comptroller; Walter Gwynn, treasurer; George P. Raney, attorney general; Hugh A. Corley, commissioner of lands and immigration of the State of Florida, who constitute the trustees of the internal improvement fund of the State of Florida; The Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, James G. Gibbs, T. C. Spooner, and Walter Gwynn, treasurer of the State of Florida, and Charles H. Foster, Gideon, Maria Bossevan; Adrian J. Mildus, Joseph Zaddock, Adrian Storp, John Collinson, & Thomas B. Coddington, Defendants.

90 Upon the application of the complainants in the above-entitled suit in equity, and the said Thomas B. Coddington, by his counsel, consenting thereto, it is ordered that the bill of complaint be dismissed as to the said Thomas B. Coddington upon the foregoing admission and statement of the complainants. It is further ordered that the said Thomas B. Coddington do recover his costs in this suit, the said costs to be taxed by the clerk of this court against the complainant.

To the honorable the circuit court of the United States for the northern district of Florida:

I request that the above order dismissing this suit as to Thos. B. Coddington be granted.

(Signed) JOS. B. STEWART,
Sol. for Compl's.

I consent to the granting of the above order.

D. P. HOLLAND,
Of Counsel for Thos. B. Coddington.

91 [Endorsed:] U. S. circuit court a- Jacksonville, W. D. of the Western North Carolina R. R. Company *vs.* Governor of Florida, the trustees of I. I. fund; the J., P. & M. R. R. Co., and others. Application to dismiss & order dismissing T. B. Coddington as a defendant.

92 The defendant, Thomas B. Coddington, having fully answered the bill of complaint filed in this court at Jackson-

ville, and the complainants in this suit being satisfied that the answer of said Thomas B. Coddington is true, so far as it relates to the charges in the said bill of complaint, and that the said coupons were and are the sole property of the said Thomas B. Coddington, and the complainants being now well satisfied that the matters and things in their said bill of complaint charged against the said Thomas B. Coddington are not true, and that the information upon which the said complainants made the said charges against the said Thomas B. Coddington was erroneous:

Now, therefore, the complainants ask that an order may be made dismissing the complainants' bill as against the said Thomas B. Coddington at the costs of the complainants.

(Signed) JOSEPH B. STEWART,
Sol. for Complainants.

93 EXHIBIT D.—Spencer Trask *vs.* The Fla. Central R. R. Co. *et al.* Oct. 26, 1882. Lee Phillips, Ex'r.

In Circuit Court U. S., Northern Dis. of Florida.

SPENCER TRASK, Compl't,
vs.
THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD CO. *et al.*

It is hereby stipulated and agreed that each and all the documents and exhibits referred to in the testimony of T. B. Coddington, now being taken before Lee Phillips, examiner, and all and every of the documents and exhibits now on file in the U. S. circuit court, Jacksonville, Florida, which are referred to by said Coddington in the case of Schutte *vs.* The J., P. & M. R. R. Co. *et al.* in his said testimony, or in the said exhibits, shall be used as evidence in the above-entitled cause by either party, said documents and exhibits to be tendered by the party intending to use them at the hearing hereof.

A. W. COCKRELL,
Sol'r for Spencer Trask, Complainant.
C. D. WILLARD,
Oct. 26, 1882. *Sol. for J. Fred. Schutte et al.*

94 It is also further stipulated that either party have leave to refer in like manner to the petition of Thomas B. Coddington, filed in the United States Supreme Court in the case of Schutte *et al. vs.* The J., P. & M. R. R. Co. *et als*, and the order made thereon. The said petition, by printed copy, is herewith filed as evidence for the respondents, marked Exhibit E, as well as the petitions in the lower court referred to and exhibits.

Oct. 26, 1882.

C. D. WILLARD,
Solicitor, &c.
A. W. COCKRELL,
Sol. for Compl't.

95 EXHIBIT E.—Spencer Trask *vs.* The Fla. Central R. R. Co. *et al.* Oct. 26, 1882. Lee Phillips, ex'r.

Supreme Court of the United States. In Equity. Nos. 667, 668, 669.

Petition of Thomas B. Coddington for leave to move that the mandate in these suits do not issue until the special order of this court, and for a modification of the opinion of the court so far as it refers to the petitioner.

96 Supreme Court of the United States. Nos. 667, 668, and 669. October Term, 1880.

THE FLORIDA CENTRAL RAILROAD COMPANY, Appellant,
vs.
J. FRED. SCHUTTE *et al.* } No. 667.

THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY, Appellant,
vs.
J. FRED. SCHUTTE *et al* } No. 668.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY, Appellant,
vs.
GEORGE F. DREW, Governor, etc., THE JACKSONVILLE, PENSACOLA & MOBILE RAILROAD COMPANY *et al.* } No. 669.

To the Hon. the Chief Justice and Associate Justices of the Supreme Court of the United States, sitting in equity:

Your petitioner, Thomas Butler Coddington, a citizen of the State of New York, merchant, residing at No. 42 Fifth Avenue, in the city of New York, and State of New York, respectfully petitioning according with the rules of this court, shows unto your honors—

Public Schools *vs.* Walker, 9 Wall., 603.

1.

That this court has at this term decided the appeals in the above-entitled suits in equity; the opinion of the court being rendered by the Chief Justice, but that the mandate of this court has not yet issued thereon to the court below.

2.

97 That by reference to the record, pages 1154, 1171, it will be seen that this petitioner has an interest in 192 bonds of like class as those held by the complainant Schutte *et al.*, which 192 bonds form a part of 1,000 bonds which this court has at page 6 and 13 of its opinion decided were issued and exchanged by the authority of the Florida Central Railroad Company, for which interest your petitioner intervened *pro intresse suo* in the circuit court, and that his petition and equities are yet undecided, and have

not been heard in this court or the said circuit court, and that his petition and equities are yet undecided. By reference to that petition, folio 2577, page 1157, it will be seen that in 1878 he informed the circuit court that a litigation relative to the 192 bonds was then pending in chancery in England between the J., P. & M. R. R. Company, your petitioner giving a full history of the English case, and its then status in 1867. And at folio 2583, that an appeal was then pending in England from an order of Vice-Chancellor Sir Charles Hall, and praying that the property of the Florida Central Railroad Company should not be sold until the status and ownership of these 192 bonds were decided (fol. 2617). Since then your petitioner shows that the High Court of Justice in Chancery in England on appeal reversed the decision of the Vice-Chancellor, and that by virtue of the orders of the English court your petitioner obtained, and now holds said 192 bonds, and has filed, and there is now pending in the said United States circuit court at Jacksonville, and not heard or decided, a supplemental petition of your petitioner showing to the court that he now has these 192 bonds, and asking that they may be redeemed, or the lien of your petitioner enforced by the court by sale of the property of the Florida Central Railroad Company.

3.

98 Your petitioner, having shown to this court his interests herein, which appears of record as aforesaid, saving as to the supplemental petition, now shows to the court that his rights are jeopardized and injured without the intention of this court in that part of its opinion in the above-entitled cases, at page 6 of the opinion, wherein the court say this petitioner took the bonds "clandestinely" to New York; and he asks this court to so far modify its opinion as to leave out the word "clandestinely;" or while not interfering with the opinion of the court or its decision, to declare that the said words are not to be taken prejudicial to the equities or rights yet to be heard or which are pending in the court below.

4.

Your petitioner asks the court's attention to the following part of the records, fol. 2534 to 2538, which was introduced as the part of Coddington's testimony by the complainants, Schutte *et al.*, in reply to an interrogatory which required the introduction of his answer in another case. This gives the cause why your petitioner was connected with the said 1,000 bonds, and is as follows: "That this defendant's whole connection with these bonds were had for a good and lawful purpose, and, as this defendant then believed, for the benefit of the parties in interest, and the result this defendant believed would eventually be that the line of railroad would be built to the great benefit of the people of the State of Florida. This defendant was also informed, that he believed it, and he acted upon that belief, that the State of Florida has by law authorized the Governor to exchange State bonds for the bonds of the railroad
99 companies, and that S. W. Hopkins & Co. had sold in England

State bonds that were then authorized to be issued, and had agreed to deliver to the purchaser four millions of said State bonds at the given time; and, further, that it was essential for the consummation of the contract that the bonds should be delivered as stipulated, and that Edward Houston would, it was supposed, deliver one million of said bonds to this defendant in trust for him if this defendant would accept the trust, and that the receipt and delivery of this million of bonds held by Houston was the obstacle in the way on realizing the money from the sale of the bonds, and that if this million of bonds could be delivered in time to complete the contract of sale in London that the whole enterprise would be a success, and the railroad would be speedily constructed westward as designed by the legislative authority.

This defendant supposed that he was undertaking a matter that would be a great public and corporate benefit.

This defendant had full faith in these representations, and acted upon them, and was anxious that this Florida line of railroad should be completed westward through the State of Florida. This defendant has been the good business friend of the Florida railroad; that when the Pensacola and Georgia Railroad Company was building its road this defendant sold that company (Edward Houston being its president) large quantities of railroad iron, amounting to more than two hundred thousand dollars on credit, and took the notes of [the] company therefore, and when that company failed to pay its notes he compromised with them, and took the mortgage bonds of the company in payment at 60 cents on the dollar, and years afterwards this defendant's partner sold them at the solicitation of Edward Houstoun to George W. Swepson, while this defendant was in Europe
100 at 50 cents on the dollar. After the war this defendant again credited the company, and used all his best endeavors to assist the company and advance its credit, and gave up his coupons (and induced his friends to give up their coupons) past due for alleged preferred stock to the amount of over sixty thousand dollars, so as to save the railroad from bankruptcy and sale to its stockholders and to the people of Florida; and that this defendant did this because he had entire faith in the character, honor, and integrity of Edward Houstoun, its president, and gave these past-due coupons and obtained those of his friends, and relying on the representations and statements of Edward Houstoun, the pres. of the company, not supposing for one moment that Houstoun was deceiving this defendant, which afterwards proved to be the case. This defendant afterwards heard that the Pensacola and Georgia railroad had been sold, as the other Florida railroads were, by the trustees of the internal improvement fund, and that the new companies were organized, and Houstoun and Milton S. Littlefield were the owners of more than two-thirds of the whole line of railroad from Jacksonville westward, and that an exchange of bonds by the State for railroad bonds had been authorized by law, and that these bonds had been contracted to be sold and delivered to parties in London, and that there was no doubt of the success of the new company in being able to speedily build Florida railroads through to Mobile, Ala.

That the obstacles in the way was the delivery of the bonds in London in time to the purchasers, according to the contract; and this defendant agreed to assist in taking this million of dollars of State bonds to London for this purpose, believing, as aforesaid, that it was a good and great public and corporate enterprise, and to one which he wished every success. That with this intent and
101 purpose this defendant went to Florida in January, 1871, and then obtained the bonds, and afterwards delivered them to S. W. Hopkins and Company in London in April, 1871, by the positive and peremptory order of Edward Houstoun, for whose account and in trust for whom this defendant received the bonds; and also by the order and direction of Milton S. Littlefield, pres. of the Jacksonville, Pensacola and Mobile Railroad Company; and also by the order and direction of Harrison Reed, Governor of Florida; all of which will more fully appear in this his answer hereafter in detail.

This defendant says that he has had to pay many thousands of dollars of his own money because he obeyed the order of the said Houstoun.

5.

That, besides serving the parties, the only other interest, pecuniary or otherwise, your petitioner had was to obtain pay for certain coupons part due, amounting to $24,465, and with interest over $28,000. Thereupon the J. ,P. & M. R. R. Co. agreed that if he would take the 1,000 bonds to Europe they would pay him $25,000 on his delivering the company his said past-due coupons. (See page 1169.)

6.

Your petitioner further shows that more than one year after the delivery of the 1,000 bonds to S. W. Hopkins & Co., as ordered by the company, and at a time when for more than one year this petitioner had ceased to have any connection whatever with said bonds, the J., P. & M. R. R. Co. sought your petitioner (see Record, page 1155, fol. 2573), and for their benefit and for valuable consideration at the company's solicitation and to settle all differences, and for certain individual property of your petitioner, agreed, in
102 London in August, 1872, to pay your petitioner forty thousand dollars and interest out of a particular fund in New York, and, in case of not so doing, to give yonr petitioner one hundred and ninety-two bonds as a pledge and security to pay said sum, with power in your petitioner of sale.

All of which is set out in the agreement in the record at fol. 2573 to 2577, pages 1155 to 1157. This occurred on August 22, 1872, one year, four months, and nine days after the company's resolution of April 13th, 1871; ordered Houstoun to place the bonds with S. W. Hopkins and Company (opinion of the court, page 6) for the specific performance of this agreement the suit of your petitioner was brought in the English equity courts, and by virtue of the order of that court your petitioner now holds the said one hundred and ninety-two bonds, and is seeking to be heard as aforesaid and have his equities adjudicated, which have their conception and foundation on said agreement of April 22d, 1872.

7.

By reference to record, page 1132, folio 2517, it will appear that the complainants, Schutte *et al.*, made your petitioner their witness, and at folio 2518, that your petitioner has a claim for $40,000 and a lien on these one hundred and ninety-two bonds pending and undecided, and at fols. 2518 to 2618 the real facts as to the whole 1,000 bonds; at fol. 2553 will be found the authority by which the petitioner took the bonds therein, being copied the written instructions of the Governor of Florida; also the president of the railroad company, also Houstoun to your petitioner relative to the 1,000 bonds, and by reference to fols. 2530 and 2531, that the parties who obtained, and for whose benefit the injunction of the State court was rendered,
103 to which Gamble and Wescott both gave their consent to the petitioner taking said bonds.

This court has, in its opinion, pages 6 and 13, decided that on the 13th of April, 1872, the Florida Central Railroad Co., by resolution of that date, authorized Edward Houstoun to place these bonds with S. W. Hopkins and Co.; by reference to fols. 2549, 2551 it it will be seen, and the papers were therein set out in full, that five days after this resolution to which, on the 18th of April, 1872, your petitioner, having received by cable directions, did deliver the said 1,000 bonds as by the resolution of the company directed, and that this delivery was concurred in by the Governor of Florida, the pres. of the J., P. & M. R. R. Co., and the receipt of the 1,000 bonds acknowledged.

All these papers from the Governor of Florida, Houstoun, and the said president, including the cable message from Houstoun, will be found at fols. 2549 to 2551.

8.

Your petitioner shows that the parties before the court in these three appeals had made up this voluminous record to suit their own interests and cases pending, and that your petitioner has not been heard, nor are his equities relative to 192 of said 1,000 bonds yet been heard or decided even in the court below. But the court will see from the record that the petitioner's equities were before the court below (page 1154, fol. 2570), and that all the solicitors on both side, by consent among themselves, omitted from the record various papers relative to your petitioners' interest (see fol. 4041, page 1470, fols. 4044–4045); the complainant's, Schutte *et al.*, interest being that no more bonds than those they hold should be placed on the property, thereby weakening their security. The Florida Central Railroad Company's interest being that their debts should not be increased beyond the amount held by Schutte *et al.* if they could
104 avoid it. Hence, all parties before this court are in interest to prevent the equities of your petitioner relative to 192 of said bonds being heard, thereby causing this court to do great injustice to this petitioner without this court so intending. Your petitioner believes that this court will not allow the rights of this petitioner to be prejudiced in the court below until his equities are heard after

he has had his day in court, and an opportunity of being heard, by reason of anything that may be said in the opinion of the court in these cases on record made up by adverse parties to your petitioner, with whom he is in nowise privy, but now has litigations pending.

9.

Your petitioner begs leave to ask this court to turn to the case quoted by this court in 15th Florida Reports, at page 721 of that case wherein your petitioner was not a party, and has no knowledge, yet the parties in that case go into court and get a decision from the supreme court of Florida, both counsel agreeing "that the defendant, The Florida Central Railroad Co., can prove by T. B. Coddington," then followed what they agreed to say for Coddington. This agreement was not known to your petitioner. They never could have proved any such thing by your petitioner, and this record, fols. 2020–2, shows the contrary. And yet these parties there got, on that agreed statement, among themselves, the decision quoted by your honors. Your honors will perceive that the case in 15 Fla. was made, not on what your petitioner would have testified to if he had been before the court as a witness or otherwise stated for himself, but upon what other persons, to wit, the parties before that court in Florida, said they could prove by him, so much, therefore, of said case as alludes to this petitioner and his transactions with the said bonds ought not to be taken to the prejudice of your petitioner by this court.

105

10.

Your petitioner shows (see opinion of this court at page 13) that Schutte *et al.* are seeking to have a confirmation of a sale of the Florida Central railroad made by them pending the appeal, which, if done before the equities of your petitioner are determined, will, by the process of this court, cause litigation to increase and innocent persons, perhaps, to suffer by reason of the purchasers under the decree putting new bonds on the market for sale. As appears from the record in this case, such is the intention of the complainants, Schutte *et al.* (see page 1107, Schedule D, to complainants' bill, memorandum plan), under decree in these suits, and an issue of bonds on the property thus obtained under the process of the court would, if done before the status and lien of the aforesaid 192 bonds held by your petitioner are decided by the courts, will result in more "vexatious litigation" about these Florida railroads, or prevent the petitioner rom getting relief or being heard.

11.

Your petitioner says that it is not to be wondered at that this court, in its opinion, has unintentionally prejudiced his rights and equities when he was not heard—not all the record nor all the facts before the court; and when the opinion was given, as this court says, that, page 9, upon facts gathered by the help of counsel, from the confused mass of papers brought here as the transcript of part

of the record below, and filling nearly fifteen hundred printed pages, wherefore your petitioner respectfully asks:

First. That he may have leave to make a motion that the
106 mandate of this court do not issue on the opinion and decree of this court on the aforesaid appeals until the further and special order of this court, and not until the equities of your petitioner and the status of said 192 bonds now held by your petitioner are decided.

Second. That your honors will so modify the opinion of the court as to leave out the word "clandestinely" in the thirteenth line of the 6th printed page of the said opinion, or that your honors may, in such manner as to the court seem meet, declare that nothing in this said opinion is to be taken to the prejudice of your petitioner.

And your petitioner will ever pray, and etc.

107 EXHIBIT F.—Referred to in testimony of T. B. Coddington herein, Oct. 26, 1882. Lee Phillips, ex'r. Spencer Trask *vs.* The Fla. Central R. R. Co. *et al.*

Notice Served on M. S. Littlefield, Esq., Pres. J., P. & M. R. R. Co., August 1st, 1881.

To the Jacksonville, Pensacola & Mobile Railroad Company:

You will please take notice that on Monday, the 22nd day of August proximo, at the hour of 12 m., and in the Exchange sales-room, No. 111 Broadway, in the city of New York, in the State of New York, I will offer for sale to the highest bidder one hundred and ninety-two bonds of the State of Florida, numbered between 3201 & 3768, d't. January 1st, 1870, issued in exchange for the bonds of the Florida Central Railroad Company.

Said bonds will be sold pursuant to a power conferred upon me in that behalf by the J., P. & M. R. R. Co. in a written agreement between me and said company, dated 29th August, 1872, and which is fully set out in a petition heretofore filed by me in the cause of J. Fred. Schutte *et al. vs.* The Jacksonville, Pensacola & Mobile Railroad Company *et al.* in the circuit court of the United States for the northern district of Florida.

T. B. CODDINGTON.

108 To M. S. LITTLEFIELD, Esq.,
Pres. J., P. & M. R. R. Co.:

The sale of the above-mentioned bonds is postponed until the twelfth day of September, at half-past twelve, at said Exchange sales-room, No. 111 Broadway, August 22nd, 1881.

T. B. CODDINGTON.

[Endorsed:] The Jacksonville, Pensacola and Mobile Railroad Company accepts service of the within notice, this 22nd day of August, 1881. The Jacksonville, Pensacola and Mobile Railroad Company, by M. S. Littlefield, president. Served on M. S. Littlefield, ex., &c., in the office of Mr. Stewart, Bonel b'd'g, Broadway, 2.45 p. m. H. J. B. Nash. In presence of Mr. S.

109 EXHIBIT G.—Refer-ed to in testimony of T. B. Coddington herein, Oct. 26, 1882. Lee Phillips, ex'r. Spencer Trask *vs.* The Fla. Central R. R. Co. *et al.*

To the Jacksonville, Pensacola and Mobile Railroad Company:

You will please take notice that on Monday, the 22nd day of August proximo, at the hour of 12 m., and in the Exchange sales-room, No. 111 Broadway, in the city of New York, in the State of New York, I will offer for sale to the highest bidder one hundred & ninety-two bonds of the State of Florida, numbered between 3201 & 3768, dated January 1st, 1870, issued in exchange for the bonds of the Florida Central Railroad Company.

Said bonds will be sold pursuant to a power conferred upon me in that behalf by the J., P. & M. R. R. Co. in a written agreement between me and said company, dated 29th August, 1872, and which is fully set out in a petition heretofore filed by me in the cause of J. Fred. Schutte *et al. vs.* The Jacksonville, Pensacola and Mobile Railroad Company *et al.* in the circuit court of the United States for the northern district of Florida.

T. B. CODDINGTON,
No. 27 Cliff St., New York.

110 STATE OF NEW YORK, *City & County of New York:*

Before me, W. S. Holbrook, a notary public, personally appeared H. V. B. Nash, who, being first duly sworn, says: That, on the first day of August, 1881, at 27 Cliff St., he served the within notice by handing a true copy thereof to Milton S. Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company.

H. V. B. NASH.

Sworn to & subscribed before me, this 1st day of Aug., 1881.
[SEAL.] W. S. HOLBROOK,
Notary Public, King's Co.

Certif. filed in N. Y. Co.

[Endorsed:] The Jacksonville, Pensacola and Mobile Railroad Company acknowledge service of the within notice, this 1st day of August, 1881. M. S. Littlefield, pres. J., P. & M. R. R. Co. New York, Oct. 1, 1881.

111 EXHIBIT H.—Referred to in testimony of T. B. Coddington herein, Oct. 26, 1882. Lee Phillips, ex'r. Spencer Trask *vs.* The Florida Central R. R. Co. *et al.*

M. S. LITTLEFIELD, Esq.:

We hereby agree to hold the net proceeds of the one thousand bonds of the State of Florida for one thousand dollars each to be disposed of by us, subject to the performance of the instructions contained in the two documents dated 11th and 12th January, 1871, of which copies are hereto annexed.

Dated this 18th day of April, 1871.
London. S. W. HOPKINS & CO.

TALLAHASSEE, FLORIDA, *January* 11, 1871.

Received from Edward Houston, Esq., in trust and for his account, one thousand Florida Central Railroad Company first mortgage bonds, payable to the State of Florida, for one thousand dollars each, with which I hereby undertake to arrange with Gen. M. S. Littlefield and other parties interested, and collect from him or them the amount which it is admitted is now due to said Houston, viz., one hundred and sixty-three thousand and twenty-six $\frac{70}{100}$ dollars, with interest thereon at seven per cent. from the time M. Littlefield's draft on S. W. Hopkins & Co. for said amount fell due, and
112 in addition thereto the sum of five thousand dollars for costs and expenses incurred by said Houston in suits brought by parties against said Houston in relation to those bonds or other bonds and the stock of the Florida Central Railroad Company, it being understood that all proceedings at law or otherwise are to be discounted, or, if that be impossible, he is to be indemnified by responsible parties against all damages or costs arising out of said proceedings, it being further understood that said Houston shall, when paid, transfer and assign to said Littlefield all the stock in the Florida Central R. R. Co. or other securities which he holds or which were given him as collateral security to secure the above amounts due to said Houston.

And it is further understood and agreed that said Coddington is to collect the further sums of money and pay to said Houston,
113 for account of the parties named below, which it is understood are a lien subsequent and inferior to said Houston's lien on these bonds, viz:

M. D. Papy, Esq., the sum of sixteen thousand dollars.

Col. R. H. Gamble, the sum of fifteen thousand dollars, who is to surrender to said Littlefield three hundred shares of stock in the Florida Central R. R. Company and seventeen hundred dollars in the bonds of the P. & G. R. R. Co. and the Tallahassee R. R. Co. at par.

J. P. Sanderson, Esq., the sum of fifty-seven thousand five hundred and sixty dollars, and said J. P. Sanderson is to surrender to said Littlefield seventy shares of stock in Florida Central R. R. Co., and comply with his agreements with said Littlefield, for which a a part of said sum is in consideration.

F. H. Flagg, Esq'r the sum of four thousand dollars, for which he is to surrender the Central R. R. Co. stock and the Pensacola and Georgia R. R. bonds which he holds to said Littlefield.

And also to pay for seventy shares of stock now or lately
114 held by J. D. Westcott, Jr., Esq'r the sum of thirty-eight hundred and forty-five $\frac{33}{100}$ dollars when said stock is to be delivered to said Littlefield.

This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by S. W. Hopkins &

Co., of New York. The remainder of said proceeds is to be disposed of as directed by the parties interested.

T. B. CODDINGTON.

I approve and assert to the same.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

PRESIDENT'S OFFICE, JACKSONVILLE, PENSACOLA & MOBILE RAILROD CO., TALLAHASSEE, FLA., *Jan.* 12, 1871.

T. B. CODDINGTON, Esq're, *Tallahassee, Fla.*

MY DEAR SIR: I have the honor to give you the following
115 instructions in relation to the bonds or the proceeds thereof which you have received from the Governor in exchange for railroad bonds:

1. The bonds will be delivered to the parties in London, England, who have purchased the four thousand bonds issued in aid of the Jacksonville, Pensacola & Mobile, and collect the pay therefore.

2d. You will pay the following-named parties, viz:

Edward Houston, $163,000; M. D. Papy, $16,000; Judge Westcott, $5,000; —— Gamble, $15,000; Col. J. P. Sanderson, $57,000. I state the amounts, not exactly, but about the sums as you have them exact. Upon each party delivering to me or to my order all stock, bonds, coupons, drafts, acceptances, or whatever the said is to pay for, but should any of the parties, whose names are mentioned above, refuse to receive the said amounts after it had been offered to them, and after Col. Houston has been paid, then the said amounts shall be paid to me or to my order.

116 3rd. The balance of the money will be placed to the order of his excellency, Harrison Reed, Governor of Florida, to pay indebtedness of the State.

Truly yours,

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

P. S. This letter is so far modified as to conform to the letter or receipt given by me to Edw. Houston and approved by me.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

T. B. CODDINGTON, Esq.:

You will please place to my credit in the National Trust Company of New York city the amount called for in the above arrangement, either by wire or letter, and oblige,

HARRISON REED,
Governor of Florida.

117 EXHIBIT I.—Referred to in testimony of T. B. Coddington and part hereof. Oct. 26, 1882. Lee Phillips, ex'r.

Spencer Trask *vs.* The Florida Central R. R. Co. *et al.*

Statement of Coupons, Pensacola & Georgia R. R. Co.

No. coupons.	Bond, No.	When	Where payable.	No. of coupons.	Value.	Total.
16	81 to 93	Jan'y 1, 1868	New York	13	$35	455 00
"	101 to 103	"	"	3	"	105 00
"	112 to 119	"	"	8	"	280 00
"	122 to 132	"	"	11	"	385 00
"	144 to 148	"	"	5	"	175 00
17	81 to 93	July 1, 1868	"	13	"	455 00
"	101 to 132	"	"	32	"	1,120 00
"	144 to 148	"	"	5	"	175 00
18	81 to 93	Jan'y 1, 1869	"	13	"	455 00
"	101 to 132	"	"	32	"	1,120 00
"	144 to 148	"	"	5	"	175 00
21	387 to 477	Jan'y 1, 1868	"	91	"	3,185 00
"	483 to 485	"	"	3	"	105 00
"	Blank	"	"	5	"	175 00
22	387 to 477	July 1, 1868	"	91	"	3,185 00
"	483 to 485	"	"	3	"	105 00
"	Blank	"	"	5	"	175 00
23	387 to 477	Jan'y 1, 1869	"	91	"	3,185 00
"	483 to 485	"	"	3	"	105 00
"	Blank	"	"	5	"	175 00
"	386	"	"	1	"	35 00
4	100 to 102	Jan'y 1, 1862	Savannah	3	"	105 00
5	100 to 102	July 1, 1862	"	3	"	105 00
6	100 to 102	Jan'y 1, 1863	"	3	"	105 00
7	100 to 102	July 1, 1863	"	3	"	105 00
8	100 to 103	Jan'y 1, 1864	"	3	"	105 00
118						
9	100 to 102	July 1, 1864	"	3	"	105 00
10	100 to 102	Jan'y 1, 1865	"	3	"	105 00
11	100 to 102	July 1, 1865	"	3	"	105 00
12	100 to 102	Jan'y 1, 1866	"	3	"	105 00
13	100 to 102	July 1, 1866	"	3	"	105 00
14	100 to 102	Jan'y 1, 1867	"	3	"	105 00
15	76 to 78	July 1, 1867	"	3	"	103 00
16	100 to 102	July 1, 1867	"	3	"	105 00
16	26 to 84	Jan'y 1, 1868	"	59	"	2,065 00
"	89 to 98	Jan'y 1, 1868	"	10	"	350 00
"	100 to 103	Jan'y 1, 1868	"	4	"	140 00
17	26 to 84	July 1, 1868	"	59	"	2,065 00
"	89 to 98	July 1, 1868	"	10	"	350 90
"	100 to 103	July 1, 1868	"	4	"	140 00
18	26 to 87	Jan'y 1, 1869	"	62	"	2,170 00
"	89 to 98	Jan'y 1, 1869	"	10	"	350 00
"	100 to 103	Jan'y 1, 1869	"	4	"	140 00
				699		$24,465 00

119 United States Circuit Court, 5th Circuit, Northern Dist. Fla.

SPENCER TRASK

vs.

THE JACKSONVILLE, PENSACOLA & MOBILE R. R., THE FLORIDA CENTRAL R. R. CO., J. FRED. SCHUTTE *et als.*

This cause came on to be heard on the pleadings & proofs, and was argued by the solicitors of the respective parties; and, upon consideration thereof, it is ordered that the said bill be dismissed with costs.

April 19, 1884. DON A. PARDEE,
Circuit Judge.

120 United States Circuit Court, 5th Judicial Circuit, Northern District of Florida.

SPENCER TRASK

vs.

THE FLORIDA CENTRAL RAILROAD COMPANY, J. F. SCHUTTE *et als.*

I, Philip Walter, clerk of the aforementioned court, do hereby certify that the foregoing record, paged from 1 to 108, is a true & complete record of the above-entitled cause, as directed by counsel.

In witness whereof, I have hereunto set my hand & official seal, at the city of Jacksonville, in the district & circuit aforesaid, this 8th day of October, 1884, and of our Independence the 109th year.

[SEAL.] PHILIP WALTER.

121 WEDNESDAY MORNING, *April* 16, 1884.

Court met pursuant to adjournment.

Present: Honorable Don A. Pardee, U. S. circuit judge; Honorable Thomas Settle, district judge.

SPENCER TRASK *vs.* THE FLORIDA CENTRAL R. R. COMPANY.

On motion of A. W. Cockrell, Esq'r, it is ordered that decree *pro confesso* be entered; & it is further order- that *that* the testimony in this cause taken in New York be published.

Messrs. MacVeigh and Henderson having entered their appearance for the defendant company, it is ordered that the decree *pro confesso* be set aside.

Ordered, That the defendant be allowed to file the answer of the Dutch bondholders as the answer of the defendant company.

To which answer complainants filed their replication.

The complainants offered in evidence one hundred and ninety-two (192) bonds, the same bonds a copy of which is affixed to the bill, marked Exhibit A.

122 The court ruled that the printed record in the Schutte case was in evidence in the case.

Ordered, That the court do now adjourn until to-morrow morning at 10 o'clock.

SATURDAY, *April* 19*th*, 1884.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, U. S. circuit judge; Hon. Thomas Settle, U. S. district judge.

Court opened in due form.

* * * * * * * *

SPENCER TRASK
vs.
JACKSONVILLE, PENSACOLA & MOBILE R. R., THE FLORIDA CENTRAL R. R., J. F. SCHUTTE *et al.*

This came on to be heard on the pleadings and proofs, and was argued by the solicitors of the respective parties, and upon consideration thereof it is ordered that the said bill be dismissed with costs.

* * * * * * * *

The plaintiff prayed an appeal in open court, which was granted on giving bond in the sum of five hundred dollars.

* * * * * * * *

Ordered, That this court do now adjourn until Monday morning at 10 o'clock.

123 In the Circuit Court of the United States, Northern District of Florida. In Equity.

SPENCER TRASK, Complainant,
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, THE FLORIDA CENTRAL RAILROAD, J. FRED. SCHUTTE *et al.*

Know all men by these presents, that we, Spencer Trask, complainant in the above stated cause, as principal, and E. C. Clark and W. M. Burdick, as sureties, are held and firmly bound unto the Jacksonville, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, J. Fred. Schutte, Jans Prins, Adreanus Prins, Heinrich Ulrici, Elias Fuld, J. Barzo, H. Van Booven, D'n Nicholas Jacob den Fix, J. H. Brunkruff, J. H. Grem, Willamette Van Tyen, Van Taer, C. Booth, L. L. Wertheim, Wysman DeVooght, T. P. Raepoptz, Jan Tichlaer, Jr., Jacobus Wertheim, P. Van Reysen, May D. Benethy Beer, Gerard A. Keinsken T. Cobom, Charles Gosewincke, Boon Hartsenkz, Van Tysen, N. J. Frankes, Johannes Williem Doux, Vander Stoop, and Berg, the defendants in said
124 cause, in the full and just sum of five hundred dollars, for the payment of which *we are* truly to be made to the said defendants, their successors, representatives, and assigns, we bind ourselves and each of us, our and each of our heirs, administrators, and executors.

In witness we have hereunto, this the ninth day of July, A. D. 1884, put our hands and seals.

The conditions of the above obligation is such, that whereas at a session of the circuit court of the United States, now pending, for northern district of Florida, at Jacksonville, in said State, in a certain

cause depending there, wherein the said obligor, Spencer Trask, was complainant, and the obligees defendants, a final decree was rendered on the 19th day of April, 1884, against the said complainant, dismissing his said bill, and having in open court applied for an appeal to the Supreme Court of the United States from said decree, which is granted on the execution of this bond, the same being executed and filed during the term of said court in which said decree was rendered:

Now if the said Spencer Trask shall prosecute his said ap-
125 peal to effect, and if he fail to make his plea good, shall answer all costs, then this obligation to be void; otherwise to be and remain in full force and effect.

SPENCER TRASK. [SEAL.]
E. C. CLARK. [SEAL.]
WINSLOW M. BURDICK. [SEAL.]

July 17th, 1884, bond accepted.

DON PARDEE, *Judge.*

STATE OF NEW YORK, }
County of New York, } *ss:*

Personally before me came Spencer Trask, E. C. Clark, and W. M. Burdick, who, being sworn severally, depose and say, each for himself: That he owns property in his own right over and above all his liabilities and exemptions allowed by law and subject to execution, more than sufficient to pay the amount named in the foregoing bond.

Sworn to and subscribed before me, this July 9, 1884.

[SEAL.] RICHARD F. PEARSALL,
Notary Public, King Co.

Filed in N. Y. Co.

126 [Endorsed:] In U. S. circuit court, northern dist. Florida. Spencer Trask *vs.* Jacksonville, P. & Mobile R. R. Co. *et al.* Bond. Filed Aug. 11, 1884. Philip Walter, clerk.

127 *Assignment of Errors.*

United States Supreme Court. In Equity.

SPENCER TRASK, Appellant,
vs.
THE FLORIDA CENTRAL RAILROAD COMPANY, J. FRED. SCHUTTE, *et al.*, Respondents. } No. —.

Of October term, in the year of our Lord one thousand eight hundred and eighty-four.

Afterwards, to wit, on the second Monday in October, in this same term, before the justices of the Supreme Court of the United States, comes Spencer Trask, by Daniel P. Holland, his solicitor, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1st. That the circuit court of the United States for the
128 northern district of Florida, sitting in equity, at Jacksonville, erred in refusing to grant the prayers in complainant's bill, or to grant either or any of said prayers.

II. That said circuit court erred in making and pronouncing the final decree dismissing the bill of the complainant.

And the said Spencer Trask prays that the final decree aforesaid may be reversed, annulled, and set aside, and a decree made by this Supreme Court of the United States granting the said Spencer Trask the relief prayed for in his said bill, or such other decree as to the said Supreme Court shall seem just.

D. P. HOLLAND,
Solicitor & of Counsel for Appellant.

129 [Endorsed:] United States Supreme Court. In equity. No. —. Spencer Trask, appellant, *vs.* The Florida Central Railroad Company, J. Fred. Schutte, *et al.*, respondents. Assignment of errors. D. P. Holland, solicitor & of counsel for appellant.

Endorsed on cover: N. Florida C. C. U. S. No. 1058. Spencer Trask, appellant, *vs.* The Jacksonville, Pensacola & Mobile Railroad Company, The Florida Central Railroad Company, J. Fred. Schutte, *et al.* Filed 11th October, 1884.

124-570

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

SPENCER TRASK,
Appellant,
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, THE FLORIDA CENTRAL RAILROAD COMPANY, J. FRED. SCHUTTE, ET AL.

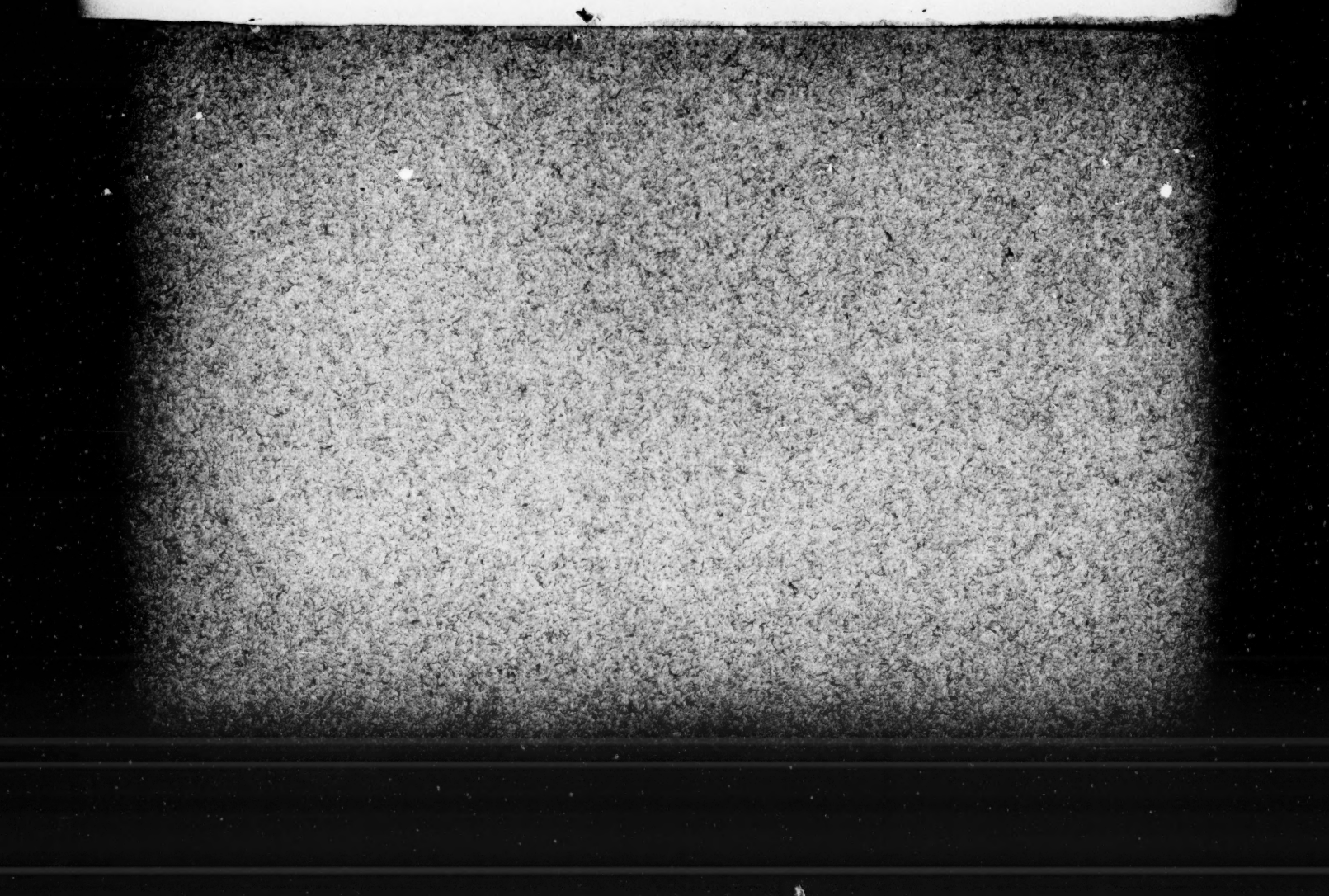
No. 90.

On Appeal from the Circuit Court of the United States for Northern District of Florida.

BRIEF OF COMPLAINANT AND APPELLANT.

D. P. HOLLAND,
S. P. NASH,
Of Counsel.

The Evening Post Job Printing Office, N. Y.



United States Supreme Court.

SPENCER TRASK,
Complainant and Appellant,

vs.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, The Florida Central Railroad Company, corporations created by and existing in the State of Florida; J. Fred. Schutte, Jans Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, J. Barso, H. Van Booven, D'n Nicholas Jacob den Fix, J. H. Brunnekruff, J. H. Grem, Willimeter Van Tyen Van Taer, C. Both, L. L. Wertheim Wyoman de Vogt, T. P. Raepolz, Jans Tichlaar, Jr., Jacobus Wertheim, P. Van Reysen, May de Benedithy Beer, Girard A. Heincken, T. Colom, Charles Gosewincks, Boon Hartsink, Van Tyen, M. J. Franke, Johannus William Donk, Vander Stoop and Berg, who are aliens and subjects of the King of Netherlands, residing in the Kingdom of Netherlands,
Defendants and Respondents.

No. 90.

Brief on the part of Complainant and Appellant.

This is an appeal by the complainant below from a decree of the Circuit Court of the United States for the Northern District of Florida, sitting in equity.

The decree dismissed the bill with costs (*p.* 59), and as no opinion was given, the case presented is, whether upon the pleadings and proofs the complainant was entitled to any equitable relief which the Court below could grant?

The action was brought against J. Frederich Schutte and others, the same persons who, as aliens and subjects of the king of Netherlands, were parties in the several cases of *Railroad Companies* v. *Schutte*, decided together by this Court in October, 1880 (103 *U. S. Rep.*, 118), hereinafter called the *Schutte case*, and against the *Jacksonville, Pensacola and Mobile*, and the *Florida Central* Railroad Companies, also parties in that litigation.

The bill was filed to obtain, in respect to 192 bonds owned by the complainant, out of 1,000 bonds issued by authority of the Florida Central Railroad Company, relief of the same character as that granted by this Court, in these suits, to *Schutte* and others, as holders of 197 bonds of the same lot of 1,000.

The proceedings in the court below, in the case at bar, were unusually informal and the record is in a confused condition. Some questions of a technical character may be raised in respect to them, and they are accordingly stated in order.

The bill was filed on the 7th Oct., 1881 (*p.* 5, *fol.* 14), and the individual defendants, Schutte and ors., appeared voluntarily (*p.* 5, *p.* 9, *fol.* 22). Process was issued against each company, and duly served on the Jacksonville, Pensacola & Mobile Co., on the 24th of October (*p.* 6, *fol.* 16) and on the Florida Central Co. on the same day (*p.* 7, 8, *fol.* 18).

On the third day of November, 1881, an order was made in the case staying the sale under the decree which had been affirmed in 103 *U. S.*, from the day advertised, Nov. 5, 1881, to the second Saturday of Dec., 1881.

On the 5th day of Dec., 1881, an order for a decree *pro confesso* for want of appearance was entered against the *two* companies (*p.* 9, *fols.* 21, 22).

On the 31st December, 1881, a demurrer to the bill was filed (*p.* 10, *fol.* 23) by the defendants, the Railroad Corporations. That it was on their behalf only is believed to be conceded. It purports to be by the "defendants served," and is signed by John A. Henderson, as solicitor, whereas C. D. Willard had appeared as solicitor for the individual defendants. This demurrer was overruled on

the 24th June, 1872, with leave to answer by the first Monday in August (*p.* 10, *fol.* 24).

The individual defendants, Schutte and others, answered on the 6th August, 1882 (*pp.* 10–13), and to their answer a general replication was filed August 30th, 1882 (*p.* 14, *fol.* 36).

On the 13th October, 1882, Lee Phillips was appointed examiner to take testimony (*p.* 14, *fol.* 37). The solicitor for the individual defendants, Schutte and others, C. D. Willard, appeared before the examiner (*p.* 15, *fols.* 38–9), but no one appeared for the defendant corporations, who had not answered under the leave given on overruling their demurrer.

The report of the examiner was made on the 26th October, 1882, and the oral testimony given before him is comprised in *pp.* 15–20, being that of one witness, Thomas B. Coddington. In that oral testimony, depositions made by him in other cases, with sundry documents, were made part of his testimony and as *Exhibits* A to I cover *pp.* 21–57 of the record in this case.

Some eighteen months afterwards, on the 16th April, 1884, the case came on to be heard. No answer had been filed on behalf of the railroad companies, and on motion of complainant's solicitor it was "ordered that decree *pro confesso* be entered," and that the testimony "taken in New York be published." Then, appearance having been entered for the "Defendant Company," the decree *pro confesso* was set aside, and said defendant "allowed to file the answer of the Dutch bondholders [Schutte and others] as the answer of the defendant company," and complainant at once filed application.

The complainant then offered his 192 bonds in evidence, and the Court "ruled that the printed record in the Schutte case was evidence in the cause."

These proceedings are at *p.* 58.

The appearance "for the defendant company" is assumed to have been intended for both companies, although in the title next preceding the entry, the Florida Central is the only company named; for if the appearance was not for both companies, the vacation of the decree *pro confesso* did not include both, yet the next entry

shows the bill as dismissed in favor of *all* the defendants (*p.* 59).

It is not apparent how the entire record in the *Schutte* case could be evidence in this, but, as no objection appears to have been made, it is assumed that it was admitted by consent.

The order allowing the answer of the "Dutch bondholders" to stand as the answer of the defendant companies, without either verification by them, or its being put in under corporate seal was clearly an irregularity; whether the irregularity was waived may be considered hereafter. The general aspect of the case is that all the defendants made common cause, defending under the same answer and by the same counsel.

The case was heard on pleadings and proofs on said 16th of April, 1884, and on the 19th of April, the entry is (Record, *p.* 58):

"This cause came on to be heard on the pleadings and proofs, and was argued by the solicitors of the respective parties; and upon consideration thereof, it is ordered that the said bill be dismissed with costs.

DON A. PARDEE,
Circuit Judge."

An appeal was allowed to the complainant (*p.* 59). The assignment of errors is at *pp.* 60, 61; that the Circuit Court "erred in refusing to grant the prayers in complainant's bill, or to grant either or any of said prayers," and "in making and pronouncing the final decree dismissing the bill."

In the October Term, 1884, of this Court (Jan. 21, 1885), the following order was made in this case, being then No. 1058:

"It is ordered that the appellants do file with Clerk of this Court, as a part of the record in this case, a printed copy of the aforesaid Record, called the Schutte case, which was filed here October 24th, 1879. And that the counsel on both sides have leave to select from said printed Record in the Schutte case, and to incorporate in their respective briefs, such portions of said printed Record as

they may deem advisable to be used as evidence in this case, and to be heard and considered by this Court at the hearing of the appeal taken in this cause, in the same manner as if the printed record in the Schutte case had been copied in, and filed as a copy of the record in this cause."

The Appendix to this brief consists of extracts from the record in the Schutte case.

History of These Bonds.

The 192 bonds in question are a part of the one thousand of which the history is given in the Schutte case (103 *U. S. Rep.*)

The appellant relies upon the facts established by the decree of the Judge at Circuit in that case, and by the affirmance of that decree. The decree is printed in full in the appendix to this brief (*fols.* 2–14).

These facts are as follows: "Some time in the spring of 1870, M. S. Littlefield, who was at the time *President* of the Jacksonville, Pensacola and Mobile Company, and a *Director* in the Florida Central, caused a million of dollars of the bonds of the last-named company to be printed in New York, and signed there by one H. H. Thompson, as Treasurer (103 *U. S. Rep.*, 127).

This Florida Central, though not consolidated with the Jacksonville Company, was operated with it, and under the control of the same parties.

"On the 30th of May, 1870, an agreement was entered into between Littlefield and one Edward Houston, *both stockholders* of the Florida Central, by which this million of bonds was put in the hands of Houston, as collateral security for a debt from Littlefield to him" (*id., p.* 128) and the resolutions passed *unanimously* at a stockholders' meeting of this Florida Central Company on the 2d June, 1880, set out on the same page, sanctions the arrangement:

"Said bonds shall be placed in the hands of Edward Houston for the purposes agreed upon by an arrangement between himself, and Milton S. Littlefield, who is the owner of *nearly all the stock* in this company," &c.

"*Resolved further*, that the directors be directed to carry the foregoing resolutions into effect" (*id.*, *p.* 128, 9).

An arrangement had been made before this with S. W. Hopkins & Co., a business firm having offices in New York and London, to negotiate 4,000 Florida State bonds; 3,000 or thereabouts had already been sent over, and the 1,000 referred to in these resolutions were needed to make up the full number. The formal agreement with this firm under seal of the company, with a power of attorney, notice thereof to the Governor of the State, and tender of the bonds at a price, are printed in the appendix at *fols.* 15–29.

Houston on the 11th of January, 1881, delivered to T. B. Coddington the 1,000 Florida Central bonds to be taken to S. W. Hopkins & Co. (Coddington's receipt, *p.* 55). These bonds being exchanged for Florida *State* bonds, through Governor Reed, Littlefield, as president of the Jacksonville, &c. Company, ratified the terms of Coddington's receipt by letter of January 12, 1871, confirmed by Governor Read (Record, p. 56).

Coddington took the bonds to New York and thence to London; he did not deliver them to S. W. Hopkins & Co., owing to their not making the necessary advances, until April 18, 1871.

They were thus in his custody *three months.*

Meantime, the Florida Central Company, at a *stockholders'* meeting held on the 13th of April, 1871, passed the following resolution:

"*Resolved*, That Edward Houstoun is authorized to place the bonds referred to in the preamble and resolution of the stockholders, adopted June 2, 1870, in the hands of S. W. Hopkins & Co. for the purposes mentioned in said resolution," &c. (103 *U. S.*, p. 129, 130).

This resolution was followed by these instructions from Houstoun to Coddington:

"ATLANTIC CABLE MESSAGE,
"STATION FROM SAVANNAH.

"From E. Houstoun, to Coddington, care Hopkins, London:

"Deliver bonds to Hopkins. Everybody protected."

This cable message was confirmed by the following letters:

"SAVANNAH, Ga., April 11th, 1871.

"T. B. Coddington, Esq,, London.

"Dear Sir,—I hereby authorize and request you to deliver to Messrs. S. W. Hopkins & Co., of London, the one thousand Florida State bonds of one thousand dollars each, received by you from the State of Florida in exchange for a like number and amount of the bonds of the Florida Central Railroad Company, the same having been delivered to you by me, to be held in trust, as per your receipt dated January 11, 1871, which I now surrender herewith, I having no further lien on or against either of the above mentioned bonds.

"Yours respectfully,

"E. HOUSTOUN."

Also the following:

"TALLAHASSE, Fla., April 6, 1871.

"Sir:

I hereby recall my letter of instruction to you, dated January 12, 1871, and also all instructions subsequently given, and now direct you to deliver to Messrs. S. W. Hopkins & Co., of 58 Old Broad street, London, the one thousand bonds of one thousand dollars each, to wit, one million dollars, of the State of Florida, issued to the Jacksonville, Pensacola and Mobile Railroad Company, now held by you as trustee, whenever Edward Houstoun,, Esq., shall authorize and direct you so to do, imposing upon you the single duty of procuring from Messrs. S. W. Hopkins & Co., their signature to the written agreement entered into with you, which is intended to fix upon them the responsibility of carrying out my original order and relieving you therefrom.

"M. S. LITTLEFIELD,

"Pres. J. P. & M. R. R. Co.

"To T. B. CODDINGTON, Esq."

And on the face of this instrument and across the writing was the following:

"I hereby approve of and ratify this order.

"HARRISON REED,

"Governor of Florida."

I do hereby authorize and request T. B. Coddington, Esq., to deliver the within mentioned bonds to S. W. Hopkins & Co., of London, as I have no further lien further lien against them.

"E. HOUSTOUN."

S. W. Hopkins & Co. gave the receipt required (Record, *p.* 54, *fol.* 111). They had made a contract, dated November 14, 1870, with a London dealer, John Collinson, to sell to him or negotiate through him these Florida bonds. Under this and supplemental agreements litigations ensued, in London and in New York, in which Collinson was a party (Appendix, *fols.* 38-47). Various other litigations were also set on foot by other parties. S. W. Hopkins & Co. had a house in New York, as well as in London, and in a suit brought in New York by the Western Division of the Western North Carolina Railroad Co., whose connection with the case is shown in the opinion in 103 *U. S. Rep.*, an order of arrest was issued against Hopkins and his partners on the 20th June, 1871, and an injunction granted against his parting with eight hundred of these bonds.

This probably led to their being brought to New York for they appear to have been there in the hands of George G. Haven as Receiver in Collinson's suit in December, 1872 (Record, *p.* 40).

Intermediate the order of arrest against Hopkins in June, 1871, and the order of December 6, 1872 (Record, *pp.* 39, 40), an agreement for the settlement of the controversies or some of them was made in London, under date of June 17, 1872, the parties being S. W. Hopkins & Co., The Jacksonville, Pensacola and Mobile Railroad Co., by *Converse L. Chase*, their attorney, and others.

Converse L. Chase's power was full as is shown by its terms and authentication (Appendix, *fols.* 68, 9).

This agreement is referred to in the orders of Court made in New York in Collinson's suit and in one brought by John L. Requa, as a large stockholder in the Jacksonville, Pensacola and Mobile Co. (Record, *pp.* 39-41).

The 800 bonds in New York were sent back to England under the orders made in New York in these two cases, the second order recognizing Coddington's lien for $40,000, and referring to the agreement made by Coddington in London with the Jacksonville, &c., Company, acting by Converse L. Chase (Agreement, Appendix, *fols.* 31-35).

The bonds sustained by this Court in the Schutte case

were part of the 800 bonds so returned to England and delivered to Collinson.

The agreement with Coddington was not performed, and he brought a suit in Chancery in England to enforce it, in his own name as plaintiff, against the Jacksonville, Pensacola and Mobile Railroad Company and John Collinson as defendants. The bill of complaint is set out in full in the Schutte record, *pp.* 1171–1181, with the documents, including Coddington's agreement with the Railroad Company, through Chase, of August 29, 1872. The prayer of the bill is in Appendix, *fols.* 49–51.

An account of the proceedings in that suit is contained in a petition of Coddington in the Schutte case (Schutte Record, *p.* 1157), paragraphs from which showing the status of the bonds are printed in the Appendix *fol.* 51–56.

From this it appears that 568 of the bonds so returned to London were, in this suit of Coddington *against* The Jacksonville, &c., Co., and Collinson, placed in the custody of the Court subject to its order.

They so remained, during the proceedings in the Schutte case in the United States Circuit Court in Florida, and until after the decree in that case.

Pending the appeal to the Supreme Court in that case, the English Court of Chancery reversed an order which had refused the bonds to Mr. Coddington and awarded them to him.

Mr. Coddington thus obtained them by order of the Court (Record, *p.* 48), and had them in his possession when they were sold to the complainant herein.

Under the agreement of August 29, 1872, Mr. Coddington had "full power to sell the said 192 bonds in order to pay himself the said $40,000 and interest, without further consent from the Railroad Company" (Appendix, *fol.* 34).

They were sold under this power at public auction, after due notice, and the complainant, the highest bidder, purchased them for $28,000 in cash paid at the time.

I.—The decision in *Railroad Companies* v. *Schutte*, 103 *U. S.*, 118, established the right of all *bona fide* holders of Florida State bonds issued in exchange for bonds of the Florida Central Company to a lien on the property of that company, and to relief similar to that granted to Schutte and others by the decree in that case.

It also adopted the views of the State Court of Florida, as announced in several cases, including the *State of Florida* vs. *The Florida Central Company*, 15 *Florida Rep.*, 690, which last case decided: That the Florida Central Company had the legal power and authority to issue the bonds which, having been exchanged for State bonds, were then held by the State. That the said bonds were a first mortgage with the right in the State to seize and sell the road under the statute of 1870. That in respect to the exchange of its bonds for the State bonds, the Florida Central Company had given its express authority for it and that b*ona fide* holders of the State bonds were entitled to a remedy in equity against the Railroad Company.

The Dutch bondholders, Schutte and others, having been found to be *bona fide* holders, the remedy in equity was given to them by the decree at the Circuit which was affirmed in this Court.

It only remains to show that the complainant is entitled also to the rights of a *bona fide* holder of the 192 bonds of the same issue, described in the bill of complainant, and produced at the hearing (Record, *p.* 58, *fol.* 122).

II.—The complainant, Trask, is a *bona fide* holder for value.

(1.) He purchased his bonds at an auction sale at the Exchange Sales Room, in the City of New York, on the 12th September, 1881 (*p.* 17, *fol.* 42)

The notice of sale expressed that it was made under the agreement dated August 29, 1872, between T. B. Coddington and the Jacksonville, Pensacola and Mobile Rail-

road Company, and described the bonds as bonds issued in exchange for bonds of the Florida Central Railroad Company. This notice, with a notice of an adjournment of the sale, was published in the leading commercial newspapers of New York City and in the *Florida Daily Union*, published in Jacksonville, Florida (*p.* 17).

Personal notice was besides served on M. S. Littlefield, President of the Jacksonville, &c., Co., on the 1st August 1881, more than six weeks before the actual sale, and notice of the adjournment was also served on him (*p.* 53, *fol.* 108).

The agreement of August 29, 1872, referred to in these notices is printed in the appendix, *fols.* 32–35, its terms authorized the sale, and the sale under it estopped the Jacksonville, Pensacola & Mobile Company, and the Florida Central Company.

(2.) The fact that the bonds bore unpaid coupons was no notice of their invalidity, the principal not being due till the year 1900. *Cromwell* v. *County of Sac*, 96 *U. S.*, 51; *Railway Co.* v. *Sprague*, 103 *U. S.*, 756.

(3.) It is said that some notice was given at the auction sale of the invalidity of the bonds. The only evidence of this was on the cross-examination of Mr. Coddington:

"Was there a notice read at the sale by anybody; and if so, what was the purport of it, and by whom was it given? A. There was a paper read by Joseph B. Stewart, or by some person for him, the particulars of which I don't remember; but its general character was to the effect that the bonds offered for sale were illegal" (Record, *p.* 20).

Stewart had been the solicitor for the complainants in the suit brought in the Circuit Court of the United States in Florida by the Western Division of the Western No. Car. R. R. Co. *vs.* George F. Drew, Governor and others, including Mr. Coddington. This suit was dismissed on final hearing and on appeal, Mr. Stewart appeared in this Court as counsel. The paragraphs in the opinion relating to this appeal are at 103 *U. S.*, at *p.* 136, and speak for themselves. The decree of dismissal was affirmed, but while

the case was in the Circuit, the suit was dismissed as against Mr. Coddington:

"The suit of the Western Division of the Western Carolina Railroad Company *vs.* George F. Drew, Governor, and others, referred to in my said deposition, was dismissed as against me after my answer was put in. It was dismissed upon the application of Joseph B. Stewart, the complainant's solicitor and attorney-in-fact in said suit.

"A copy of the application to dismiss and the order dismissing the suit as against the witness, are hereto appended" (Record, *p.* 15).

* * * * * * *

"The defendant Thomas B. Coddington, having fully answered the bill of complaint filed in this Court at Jacksonville, and the complainants in this suit being satisfied that the answer of said Thomas B. Coddington is true, so far as it relates to the charges in the said bill of complaint, and that the said coupons were and are the sole property of the said Thomas B. Coddington, and the complainants being now well satisfied *that the matters and things in their said bill of complaint charged against the said Thomas B. Coddington are not true*, and that the information upon which the said complainants made the said charges against the said Thomas B. Coddington was erroneous,

Now, therefore, the complainants ask that an order may be made dismissing the complainants' bill as against the said Thomas B. Coddington, at the costs of the complainants.

(Signed) JOSEPH B. STEWART,
Sol. for Complainants."

(Record, *pp.* 45, 6.)

Mr. Stewart did not, when the sale took place at which Trask purchased, represent the State of Florida, nor any of the parties to this action, nor, so far as appears, any one but himself. Unsuccessful in the former stages of the litigation, he was apparently present at the sale only to be bought off. A notice proceeding from such a source was not sufficient to put a purchaser on inquiry.

At auction sales it is not necessary to follow up notices given by irresponsible bystanders, if the sale goes on and the purchaser acts in good faith. It is a question in all cases of good faith upon the part of the purchaser acting in the usual course of business and risking his money in

the purchase (*Murray* v. *Lardner*, 2 *Wall.*, 110, 121; *Galveston Railroad Co.* v. *Cowdrey*, 11 *Wall.*, 459, 476–8; *Morgan* v. *United States*, 113 *U. S.*, 476, 491; *Hotchkiss* v. *National Banks*, 21 *Wall.*, 354; *Seybel* v. *Nat. Currency Bank*, 54 *N. Y.*, 288; *Raphael* v. *Bank of England*, 17 *C. B.* 161; *Easton* v. *London Joint Stock Bank*, *Law Rep.*, 34 *Ch. Div.*, 95, 111.)

(4.) As against a general notice, such as Stewart gave, Trask was chargeable only with knowledge that the sale was being made under the power, that the vendor had the bonds ready for delivery to the purchaser, and that due notice had been given under the agreement so as to estop the railroad companies. A sale duly made by a bailee who has a power of sale is equivalent to a judicial sale (*Story on Bailm.*, § 310; *Witloughby* v. *Comstock*, 3 *Hill*, 389; *Jerome* v. *McCarter*, 94 *U. S. Rep.*, 734, 739).

Complainant was, indeed, chargeable with notice that the bonds offered for sale were, *as State bonds*, irregular; but such notice did not affect the question whether the railroad companies were not bound, as held in the Schutte case.

(5.) Complainant, as a *bona fide* purchaser for value, was entitled on the hearing below to the same relief that was granted to the holders of similar bonds in the *Schutte* case; that is, to relief to the extent of the face value of the bonds and interest (103 *U. S.*, 113, 144, 5; *Cromwell* v. *County of Sac*, 96 *U. S.*, 51).

III.—But the complainant acquired at the auction sale, *at least* the title of Coddington, who was a *bona fide* holder for value.

(1.) When Coddington received the bonds in Florida and gave his receipt of January 11, 1871, he had no notice, actual or constructive, of any invalidity of the bonds. They were apparently within the powers conferred upon

the railroad companies; and it has been since decided by the Supreme Court of Florida, and the decision was adopted in the *Schutte* case: "That the Florida Central Company was authorized by the Act of January 28, 1870, to issue the bonds held by the State [being the bonds first received by Coddington and by him delivered to the treasurer in exchange for the State bonds], and that thereby a first lien was created on the road of the company in favor of the *bona fide* holders of the State bonds" (103 *U. S.*, 134).

(2.) The agreement with Coddington was a lawful and proper agreement It made him bailee of the bonds for delivery to S. W. Hopkins & Co., and for all the expenses, compensation and risks of that bailment he was a *bona fide* bailee.

The agreement between the Jacksonville, Pensacola and Mobile Co. with S. W. Hopkins & Co., was a lawful and proper agreement (Appendix, *fols.* 15–23); it called for the delivery of the bonds, and Mr. Coddington as well as any other person could lawfully be agent in such delivery.

(3.) There was nothing in the fact that by the terms of the receipt Houstoun, Papy, Gamble and others were recognized as having claims on the bonds, to charge Coddington with notice of any impropriety in the issue of the bonds. A stockholder or director, as well as a stranger, may by advances to a railroad company, or otherwise, acquire valid rights to bonds the issuing of which is in contemplation. (*Duncomb* v. *N. Y., Hous. & Co.*, 84 *N. Y.*, 190; 88 *id.*, 1.)

(4.) So far as the Jacksonville, Pensacola and Mobile Company is concerned, it is estopped by its agreement of 29th August, 1872, and by the judicial proceedings in England, from disputing Coddington's lien on the bonds for $40,000 (Appendix, *fols.* 31, 52–56).

This sum consisted of the $25,000 which Mr. Coddington was to receive for carrying the bonds to London, on his surrendering coupons of one of the underlying companies amounting to $24,465 (Appendix, *fol.* 57), and of the

$15,000 incurred to Gamble by delivering the bonds to S. W. Hopkins & Co. under Houstoun's instructions and false cable message, "Everybody protected" (Record, *p.* 18).

(5.) So far as the Florida Central Company is concerned it is estopped by its resolutions of April 13, 1871, sanctioning Houstoun's delivery of the bonds and his agreements with Littlefield (118 *U. S.*, p. 128–9).

(5). The defendants, Schutte and others, the Dutch bondholders, are estopped from denying that Coddington was a *bona fide* holder.

It was a part of their case in their action, the decree in which was affirmed in 103 *U. S.*, as to such of their bonds as affected the Florida Central Company, to trace their ownership of them through the delivery by Coddington to S. W. Hopkins, of the 1,000 issued. To do this, they made Mr. Coddington *their witness* (see heading of interrogatories and of deposition, appendix, *fols.* 60, 61). The interrogatories exhibited to witness his answer to the bill filed in the Western Division Company's suit and made it part of his deposition (entire deposition, pp. 1132–1187, Schutte Record). This answer stated in full detail his connection with the bonds, and the following averment in it thus became part of the evidence of the Dutch bondholders:

This defendant saith, First: That he absolutely denies all, each and every charge of fraud or of fraudulent intent alleged against him by the complainants [in that suit], and avers that the whole of the transaction, and each and every act (relative to the bonds which are the subject of this suit) were, so far as they were done by this defendant, or so far as he had any knowledge of them, and so far as this defendant was connected with them, good, honest, fair, legitimate and lawful acts, legally and morally; and that this defendant's whole connection with these bonds were had for a good and lawful purpose, and, as this defendant then believed, for the benefit of the parties in interest; and the result, this defendant believed, would eventually be, that the line of railroad would be built, to the great benefit of the people and the State of Florida; this defendant was also informed, and he believed it, and he acted upon that belief, that the State of Florida had by

law authorized the Governor to exchange State bonds for the bonds of the railroad companies, and that S. W. Hopkins & Co. had sold in England State bonds that were then authorized to be issued, and had agreed to deliver to the purchaser four millions of said State bonds at a given time; and further, that it was essential for the consummation of the contract that the bonds should be delivered as stipulated, and that Edward Houstoun would, it was supposed, deliver one million of said bonds to this defendant, in trust for him, if this defendant would accept the trust, and that the receipt and delivery of this million of bonds held by Houston was the obstacle in the way of realizing the money from the sale of the bonds, and that if this million of bonds could be delivered in time to complete the contract of sale in London, that the whole enterprise would be a success and the railroad would be speedily constructed westward as designed by the legislative authority" (Schutte record, p. 1136).

And in his deposition herein, Coddington asserts the same innocence (Record, *p.* 16, *fol*, 41; *p.* 18, *fol.* 44).

It is alleged in the answer herein (Record, *p.* 12, *fol* 29) that Coddington clandestinely removed the bonds from Florida. This charge has already been met several times. It originated in a stipulation offered by counsel of other parties, in a suit in the State Court of Florida, to which *Coddington was not a party*, as to matters which it was said could be proved, and which the adverse counsel accepted (15 *Florida Rep.*, 720, 721), but no such proof was ever given. Upon this fact having been shown in this Court, the word "clandestinely," which, it is said, appeared in the opinion as delivered, was omitted in the opinion as published. (See Petition, Record, *p.* 53, *fol.* 106, and 103 *U.S.*, 129, at foot; and order in Appendix, *fol.* 72).

Coddington's connection with the transaction had no taint in it whatever. He unwisely assumed responsibilities, the extent of which he did not appreciate at the time, but the transactions in no way affect his integrity, honor or good faith.

His interest in the matter was this. He had before the war furnished iron for these Florida roads, Houston being President, had taken their notes, compromised and taken mortgage bonds, and then had surrendered them at a great sacrifice. After the war, he again aided the road

and was anxious to get some of his money back. He saw that if the roads could be completed with the aid the State had agreed to furnish, there was some hope of his being paid (Record, *p.* 27.)

For his particular service in taking this $1,000,000 of bonds to London, he was to receive $25,000 and to be paid the amount due on sundry coupons which he was to surrender, of the old Pensacola and Georgia Railroad. A list of these coupons is Ex. I, Record *p.* 57. They were paid not out of the proceeds of the bonds delivered to Hopkins & Co., but at the end of a litigation in Florida, in October, 1881 (Record, *p.* 20). The $25,000 he was to receive for his services in taking the bonds to Europe, was never paid, and with $15,000 paid to Mr. Gamble, formed the principal of the claim of $40,000, to enforce which he caused the bonds in suit to be sold. Gamble was the person named in Coddington's receipt, to whom $15,000 was to be paid before the bonds were delivered to Hopkins & Co. (Record, *p.* 53, *fol.* 113).

IV.—If the foregoing views be sound, all the matters set up in the answer by way of defense are met, and complainant was entitled to a decree.

These mattters are:

(1.) That the bonds in suit "are held by the said Trask (complainant) with the same equities, and no greater than they were entitled to in the hands of the said Coddington" (Record, *p.* 13).

(2.) "That the said Coddington was not a holder of said bonds without notice of any vice or defect which vitiated the title thereto" (*Ib.*). This last position is based upon the preceding allegations of the answer in the 5th paragraph (*p.* 11, *fol.* 28, and *p.* 12) as to none of which was there any attempt to furnish evidence.

(3.) That the decree in favor of the Dutch bondholders for 197 of the 1,000 bonds excludes any one else from participating in the security which all the holders of the 1,000 were entitled to, if *bona fide* holders. This position is taken in the 1st paragraph of the answer (*pp.* 10, 11, *fols.* 26, 27).

These are all the defenses interposed by the answer.

V.—The bill of complaint in the Schutte case was, in form, a class bill filed in behalf of all equally interested (Schutte Record, *p.* 536), but in such a suit the decree should be in favor of all parties so interested, and should provide for their being brought in.

The defendants, Schutte and others, however, by their answer herein, as well as by their conduct of their case, have attempted to exclude all others.

The decree in the Schutte case provided that further equities "including the claims of those who have intervened for their interest in the fund, do stand for further consideration and disposition upon the foot of this decree" (Appendix, *fol.* 13), but nothing appears to have been done to bring in other parties.

The decree was made as of the 31st of May, 1879, and filed on the 23d of August, 1879. Coddington's petition, verified January 12, 1878, was not a petition in the Schutte case to intervene as a co-plaintiff, but was a petition made in all the pending cases, to be paid out of the proceeds of the sale, and to have that stayed till he could get his bonds from England (Petition, Appendix, *fol.* 66).

The appeal stayed proceedings under that decree, and before its affirmance in this Court, Coddington obtained his bonds from the English Court of Chancery. His petition in this Court (Record, *p.* 47–53) showed that fact, but was, of course, irregular, so far as it sought for a modification here of the decree below, or for relief which it belonged to that Court to consider. The order made upon it, in no way impaired his rights (Appendix, *fol.* 72). In the Court below, possibly

he might, by petition upon the foot of the decree, have had his rights determined, but he was not tied up to that remedy. He had a right, as bailee of the bonds held by him, to sell them under the agreement; and the purchaser had the right to bring a new action (*Williams* v. *Gibbes*, 17 *How.*, 239; *Matter of Howard*, 9 *Wall.*, 175; *Gillespie* v. *Alexander*, 3 *Russ.*, 130). All parties had notice of that right, and when the complainant, as purchaser, filed his bill, October 24, 1881, the sale of the Florida Central road had not been made, and such sale was once stayed on his application until December following (Record, *pp.* 8, 9). The sale set up in the answer as a bar to any relief to the complaint was made, therefore, subject to all rights acquired by the filing of the bill, and with full notice of the rights claimed in the bill (*Galveston Railroad* v. *Cowdrey*, 11 *Wall.*, 459, 478–9; *Trustees, &c.*, v. *Beers*, 2 *Black*, 448, 457).

The plaintiff was thus entitled to share in the proceeds of the property adjudged in the Schutte case to be a security for such of the 1,000 Florida Central bonds as any party could show he was a *bona fide* holder of the State bonds exchanged for them.

In the Schutte case, the Court did not undertake to decide that no one but the Dutch parties were such *bona fide* holders; could not have so decided unless some other *party* was before it so claiming; and no decision has ever been made that the complainant or Coddington was not such *bona fide* holder, unless it was made in the decree of dismissal now under review.

VI.—If it be urged that Coddington was paid in October, 1881, and July, 1882, for the coupons of the Pensacola and Georgia Railroad Company (Record, *p.* 20, *fol.* 47 and p. 57), this was after complainant had bought the bonds in suit, which was September 12, 1881 (*p.* 17).

This realization by Coddington does not therefore affect the complainant, nor is it any way *set up in the answer* as a defence or ground of deduction from complainant's claim.

VII.—The decree of dismissal should be reversed and the case remitted with a direction to enter a decree for the complainant, establishing his right to recover on his one hundred and ninety-two bonds the face value thereof with interest, as against the Jacksonville, Pensacola and Mobile and the Florida Central Railroad Companies, and to have the amount so adjudged satisfied ratably with the one hundred and ninety-seven bonds produced and proved by the defendants, Schutte and others, out of any property of said railroad company which has in any way been made applicable to the payment of said last-mentioned bonds since the filing of the bill herein.

D. P. HOLLAND,
Solicitor for Complainant and Appellant.

S. P. NASH,
Of Counsel.

APPENDIX.

[**Decree in Circuit. Schutte Record, P. 578.**]

1

J. FRED. SCHUTTE AND OTHERS, Complainants,

vs.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, the Florida Central Railroad Company, and others, Defendants.

In Equity.

On this 31st day of May, A.D. 1879, this cause came on 2
for final hearing on the pleadings and proofs therein, and was argued by counsel, and was fully heard by the said Court.

Whereupon, the Court being fully advised of and concerning the same, doth here now order, adjudge and decree as follows, viz.:

1st.—That the trustees of the internal improvement fund of the State of Florida have a first lien upon the railroad described in said bill of complaint in this suit, running from Lake City to Quincy, in said State, with the branch road to Monticello, and the railroad running from Tallahassee to St. Mark's, in said State, and all the property, rights and franchises belonging or appertaining thereto to secure the payment to said trustees of the sum of four hundred and sixty-three thousand one hundred and seventy-five $\frac{37}{100}$ (463,175 $\frac{37}{100}$) dollars and interest thereon since March 20, A.D. 1869, at the rate of eight per centum 3
per annum, to attach and rest upon said railroads and property as follows: Of said principal sum upon said railroad from Lake City to Quincy, with the branch to Monticello, four hundred and twelve thousand and four hundred dollars, and interest aforesaid, "and upon said railroad from Tallahassee to St. Mark's, of said principal sum, fifty thousand seven hundred and seventy-five $\frac{37}{100}$ dollars, with interest as aforesaid."

2d. That the complainants in this cause have a second lien on both of said railroads before mentioned, and upon all the property, privileges, rights and franchises thereto appertaining, and a first lien upon that part of the railroad of the Jacksonville, Pensacola and Mobile Railroad Company, between Quincy and Chattahooche, in said State, to the amount of all bonds of the said State of Florida held and owned by them, mentioned in the pleadings in this cause, and numbered 3,000 and under, together with the interest thereon matured and to mature. That the amount of said State bonds now owned and held by said complainants of principal sum, is two millions seven hundred and fifty-one thousand dollars, and the interest now matured thereon, amounts to one million six hundred and fifty-five thousand and one $\frac{60}{100}$ dollars.

3d. *That the complainants have a first lien upon the railroad mentioned in the bill of complaint*, running from Lake City to Jacksonville, in said State, and all property, rights and franchises thereto appertaining, *to the amount of all the said bonds of the said State of Florida, exchanged for the bonds of the said Florida Central Railroad Company*, numbered 3001 and upwards, *held and owned by them, said complainants*, and all interest now matured and to mature thereon. That the amount of all said last named numbered bonds owned and held by said complainants is one hundred and ninety-seven thousand dollars, and the amount of interest thereon now matured is one hundred and eighteen thousand five hundred and fifteen dollars and twenty cents.

4th. That the railroad and property and franchises pertaining thereto, extending from Lake City to Chattahoochee, in said State, including the branch road to Monticello mentioned in the bill of complaint in this cause, and the railroad from Tallahassee to St. Mark's, and the property and franchises pertaining thereto, mentioned in said pleadings, be each sold subject to the lien thereon, fixed by this decree to satisfy the lien of the said complainants thereon; that said sales be made by Sherman Conant and Alexander B. Hawkins, who are hereby appointed special masters of this Court for that purpose; that said sale be made at Jacksonville, in said State, and advertised for at least ninety days before the day of sale, in some newspaper of general circulation published in said Jacksonville, and also in some newspaper of general circulation published in the City of New York; that the purchaser or purchasers at said sale may deposit with said special masters in payment of his or their bid the said Florida State bonds, numbered 3,000 or under, in the proportion which the whole amount of the bid bears to the whole amount of said State bonds

outstanding, and numbered 3,000 or under, and interest 7
matured thereon, that is, four million four hundred and six thousand and one dollar and sixty cents.

5th. That the said railroad from Jacksonville to Lake City be sold by said special masters, at the same time and place and on like advertisement as hereinbefore provided, to satisfy the lien of said complainants thereon declared by this decree. That the purchaser or purchasers at said sale may deliver to said special masters, in payment of his or their bid, said State bonds of the State of Florida mentioned in said pleadings, and numbered 3,001 and upwards, *in the proportion which the whole amount of said bid bears to the whole amount of said State bonds outstanding*, and numbered last as aforesaid, that is, three hundred and fifteen thousand five hundred and fifteen dollars and twenty cents.

6th. That the balance of either bid for either of the roads herein directed to be sold above the amounts thereof 8
to be paid in bonds as aforesaid, shall be paid to said special masters in cash, at the time of said sale, and if not paid at once, the said masters shall immediately reoffer said property for sale until the same shall be sold and paid for according to this decree. That the amount paid in cash at either of the sales herein directed shall be paid into Court by said masters, to be disposed of by the Court, and on the coming in of said special masters' report. If said sale or sales shall be confirmed, the purchaser or purchasers shall be placed immediately in possession of the property purchased.

7th. That unless the purchaser or purchasers of said railroad from Lake City to Chattahoochee and the branch to Monticello, and the railroad from Tallahassee to St. Mark's, or either of them, shall, within one year from the day of the sale thereof, discharge and satisfy the liens of the Trustees of the Internal Improvement Fund of the 9
State of Florida thereon respectively, as hereinbefore declared, then the said railroad's property and franchises, thereto respectively pertaining, extending from Lake City to Quincy, including the branch road to Monticello, and the railroad and property and franchises thereto belonging, extending from Tallahassee to St. Mark's, shall be taken possession of and sold by the Marshal of the United States for said district separately, to satisfy the liens thereon respectively fixed by this decree, and said sale shall be advertised to take place at Tallahassee, in said State, in a newspaper of general circulation published in said Tallahassee, and also in a newspaper of general circulation published in the City of New York, at least ninety

10 days before the day of sale, and the purchaser or purchasers at said sale or sales may pay to the Marshal in satisfaction of their bid for either of said roads the bonds which are a lien upon said road, that is the bonds to pay which the lien of vendor exists as declared by this decree, in the proportion which the whole bid bears to the whole amount of bonds which are a lien as aforesaid on said road, and shall pay the balance in cash at the time of said sale, and the marshal shall return said bonds so received by him and the balance, if any, of cash into Court, to be disposed of as the Court shall direct.

8th. That in case the sales herein directed to be made to satisfy said complainants' said liens shall not be sufficient to fully satisfy the amounts due said complainants on the said State bonds number 3,000 and below, the said complainants shall be subrogated to the right of the trustees of the said internal improvement fund of Florida as to
11 any claim and right which said trustees have against any person or persons in regard to said unpaid portion of said purchase money, which is declared by this decree to be a first lien as aforesaid, and also as to any other security or securities which said trustees were or are possessed of, out of which to enforce payment to them of the amount of said unpaid purchase money or any part thereof, or out of which said trustees might have enforced payment of said lien therefor.

9th. That the application of Daniel P. Holland to have his judgment paid out of the funds in the hands of the Receivers, in this case, be and the same is hereby denied.

10th. And whereas James G. Gibbs has filed a petition to intervene *pro interesse suo*, claiming certain right in that portion of the said railroad extending from Quincy to Chattahoochee, and prays to have the same adjudicated and allowed, it is therefore ordered and decreed that the
12 rights of said Gibbs, whatever they may be, in said portion of said railroad be reserved from the effect and operation of the present decree, and any sale to be made by virtue thereof, and that it be referred to Joseph H. Durkee, Esq., as a special Master to take proofs with regard to the claim of said Gibbs, with liberty to the complainants or any other party in the cause to controvert the said claim by proofs or otherwise, and that the said Master do report upon the same with all convenient speed, and return the proofs taken, and his conclusions thereon, in order that the Court, by a supplemental decree, may take order in the matter as law and equality may require, and any proofs which have been taken in this cause may be used before the Master in reference to said claim.

11th. It is further ordered, adjudged and decreed that 13
any balance of money which may remain in the hands of the Treasurer of Florida, applicable to the payment of the liens herein and hereby established, and not otherwise disposed of by any Court having jurisdiction and control of the same, be paid by the said treasurer to the Receivers in this cause, to be appropriated, with the other moneys in their hands under the direction of the Court, to the uses of this cause, and to the satisfaction of this decree, in favor of the trustees of the Internal Improvement Fund.

It is further ordered that any further equities not herein and hereby disposed of, including the claims of those who have intervened for their interest in the fund do stand for further consideration and disposition upon the foot of this decree.

It is further ordered that the costs of the trustees of the internal improvement fund in this cause, and in the cause of the Western Division of the Western North Carolina 14
Railroad Company, in which they are defendants, be taxed, and paid out of the moneys in the hands of the Receivers.

And be it further ordered that the complainants in this cause recover their costs to be taxed, and on taxation; that the same be paid out of the fund in the hand of the Receivers in this cause.

JOSEPH P. BRADLEY,
Circuit Justice.

Filed this 31st day of May, 1879.

PHILIP R. WALTER,
Clerk.

Filed this 23d day of Aug., 1879.

P. WALTER,
Clerk.

15

[Agreement between The Jacksonville, &c. Co. and S. W. Hopkins & Co. Schutte Record, p. 1220.]

THIS AGREEMENT made this thirteenth day of April, one thousand eight hundred and seventy, by and between the Jacksonville, Pensacola and Mobile Railroad Company, a corporation duly created by the State of Florida, and existing under the laws thereof, party of the first part, and which said party acts herein by Milton S. Littlefield, its president, duly authorized hereto by resolution of the stockholders of said company adopted at their meeting on Jan-

16 uary 31st, 1870, and Sidney W. Hopkins, Frank H. Collins and Robert J. Carpenter, parties of the second part. Witnesseth as follows:

Whereas, the party of the first part is engaged in constructing a railroad from Jacksonville, in the State of Florida, to the City of Mobile, in the State of Alabama.

And whereas, the Legislature of the State of Florida did, by an act passed January 28th, 1870, grant to the said party of the first part the bonds of said State to the extent of $16,000 for each mile of said railroad to be completed.

And whereas, a certain number of miles of said road are now completed, and said Company is entitled to receive from the said State of Florida about the sum of four millions of dollars of bonds.

And whereas, said company is desirous of negotiating and selling for the best possible price the four million
17 dollars of bonds and all others which may be issued to it as fast as it may be entitled to receive the same, and to purchase with the proceeds of said bonds when realized iron rails and equipment for said road.

And whereas the parties of the second part are willing to undertake the negotiation of said bonds upon the terms and for the consideration hereafter set forth:

Now, this agreement witnesseth, that in consideration of the agreement, and of the services to be kept and performed by the party of the second part hereto, as hereinafter provided the said party of the first part has made, constituted and appointed, and by these presents does make, constitute and appoint the said firm of S. W. Hopkins & Co., the parties of the second part hereto, the financial agents of the said party of the first part, in its name, place and stead to sell, negotiate and dispose of all the said four million dollars of the said bonds of the State
18 of Florida, and all the other bonds of said State, which by the act aforesaid the said company shall become entitled to and to purchase for and on account of said party of the first part all iron and material needed by the said company for the construction and equipment of said road, and as the president of said company shall from time to time direct; but said bonds shall not be negotiated or sold for less than sixty cents on the dollar (without the permission of the party of the first part first had thereto), in currency or paper money of the United States, and all expenses of negotiation and sale are to be borne and paid by the said party of the second part.

And the said party of the first part hereby agrees to furnish and deliver to its said agents, the parties of the second part hereto, the said four million dollars of bonds,

as soon as they shall obtain the same from the State of 19
Florida, and from time to time to deliver to its said agents all such bonds as the said party of the first part shall receive the same from the State, but the parties of the second part may at any time negotiate, contract and sell the whole amount of such bonds, to which, by the act aforesaid, the said party of the first part shall be entitled, when such road is completed, to be delivered, however, as the same may be obtained from the State.

And the party of the first part hereby agrees to pay, and the party of the second part to accept in payment for said *said* services to be by them performed, the following commissions upon all such sums of said bonds as they shall negotiate or sell under this contract; that is to say, on all bonds sold at sixty cents on the dollar, a commission of five per cent. on the par value of said bonds; on all sold at sixty-five cents, a commission of seven and a half per cent.; on all sold at seventy cents, a commission of ten per 20
cent.; on all sold at seventy-five cents, a commission of eleven and a half per cent.; on all sold at eighty cents, a commission of thirteen per cent.; on all sold at eighty-five cents, a commission of fourteen and a half per cent.; on all sold at ninety cents, a commission of sixteen per cent.; on all sold at ninety-five per cent, a commission of seventeen and a half per cent.; on all sold at one hundred cents, a commission of nineteen per cent.. and in case, with the consent of said company, any bonds may be sold under sixty cents on the dollar, a commission of five per cent. shall be paid thereon. And on all purchases made for said road, said party of the second part shall be paid two and a half per cent. commission, to be paid in gold or currency, as the special purchases shall be made in gold or currency; and all purchases made by said agents shall be made in open market, and at current market rates. 21

And it is further agreed that when any purchase may be made by said party of the first part of said party of the second part of any iron or materials owned by them no commission shall be paid to them by said party of the first part on such purchase.

And in consideration of the premises the said party of the first part hereby covenants and agrees with the party of the second part, that the said party of the second part shall have the exclusive agency of the said party of the first part for the sale of said bonds, and the purchase of all its iron and material for equipment, and that said party of the first part will not employ any other person or firm for the said purposes while *while* the said parties of the part perform the conditions of this contract to be by

them done and performed; and the said parties of the second part hereby agree that they will forthwith, upon the execution of this contract, deliver to the said party of the first part at New York, one thousand tons of railroad iron, weighing fifty-six pounds per lineal yard, at sixty dollars in gold per ton, which shall be delivered on board ship at New York, at the charge of said party of the second part, the party of the first part to designate the vessels to which the same shall be delivered, and at a like price and on like conditions, deliver to the said party of the first part an additional one thousand tons of railroad iron during the month of June, 1870, and also that they will on or before April 17th inst., advance to the said party of the first part fifty thousand dollars in currency, and an additional sum of twenty-five dollars at such times as may be required by the president of said company.

And it is further agreed, that said party of the second part shall have a first lien upon all the bonds aforesaid, and the proceeds thereof, for the repayment to them of the price of said iron and of the money advanced aforesaid, and of all other advances which may be made under this contract together with interest thereon, and for all their commissions to which under the provisons of this contract they may become entitled.

In witness whereof, the said parties hereto have hereunto set their hands and seals on the 13th day of April 1870.

JACKSONVILLE, PENSACOLA AND
MOBILE RAILROAD COMPANY,
By M. S. LITTLEFIELD, (Seal)
President.
S. W. HOPKINS, & Co. (Seal)

[U. S. rev. stamps 20 cents, cancelled.]

[Power of Attorney, Jacksonville, &c., Co. to S. W. Hopkins & Co. Schutte Record, p. 1230.]

KNOW ALL MEN BY THESE PRESENTS, That the Jacksonville, Pensacola and Mobile Railroad, a corporation organized under the laws of the State of Florida, one of the United States of America, have made, constituted, and appointed, and by these presents do make, constitute and appoint Messrs. S. W. Hopkins & Co., of the City of New York, and London, England, its financial agents and true and lawful attorneys, for said company, and its name,

place and stead, to sell, dispose of, transfer, and deliver to 25
the purchasers thereof all or any part of the bonds of the State of Florida, to which said company is now, or may hereafter become, entitled under the laws of said State and to purchase for said company all such materials, iron and other supplies for the purpose of building and equipment of the railroad of said company, as said company shall from time to time direct, giving and granting unto the said S. W. Hopkins & Co., the financial agents and attorneys of said company, full power and authority to do and perform every act and thing whatsoever requisite and necessary to be done and performed, as such financial agents, as fully, to all intents and purposes, as the said company, by its board of directors and officers, could or might do, with power of substitution and revocation, hereby ratifying and confirming all that the said S. W. Hopkins & Co., or their substitute, shall lawfully do or cause to be done as such financial agents of said company by virtue hereof. 26

In witness whereof, the said Jacksonville, Pensacola & Mobile Railroad Company has caused these presents to be signed by its president and the corporate seal of said company to be affixed hereto, on the 4th day of May, in the year one thousand eight hundred and seventy.

(Signed.) MILTON S. LITTLEFIELD,
President Jacksonville, Pensacola & Mobile Railroad Company.

In presence of
(Signed.) ROLLIN STEWART,
(Signed.) I. N. GREENE.

[Notice to Governor of Florida. Schutte Record, p. 1231.] 27

TO THE HONORABLE GOVERNOR OF THE STATE OF FLORIDA:

Sir,—The Jacksonville, Pensacola and Mobile Railroad Company, having made a contract with Messrs. S. W. Hopkins & Co., of the City of New York, dated on the 13th day of April, 1870, by which Messrs. S. W. Hopkins & Co. were appointed financial agents of said railroad company, for the purpose of selling the bonds of the State of Florida to which said company is entitled by law, and purchasing and providing iron and supplies for the purpose of completing said railroad, and Messrs. S. W. Hopkins & Co. being about to furnish said company a large amount of money, iron and supplies for said purpose, and being by the terms of said contract entitled to receive all

the bonds of the State of Florida to which this company is
28 or may become entitled, as well for their security for the advances so to be made as for the selling and disposing of said bonds under said contract, and said bonds being yet unexecuted, you will please deliver to said S. W. Hopkins & Co., the financial agents of said railroad company, all the bonds of the State of Florida to which said railroad company is entitled by law; and all the bonds of said State to which it may from time to time become entitled by law, accepting their receipts therefor as the financial agents of this company.

In witness whereof, the said company has caused its president to affix his signature hereto, and the corporate seal of said company, on the 6th day of May, in the year 1870.

(Signed) M. S. LITTLEFIELD,
President Jacksonville, Pensacola and
29 Mobile Railroad Company.
[SEAL OF JACKSONVILLE, P. AND M. R. CO.]

[Offer of Bonds to S. W. Hopkins & Co. Schutte Record, p. 1222.]

58 OLD BROAD STREET,
LONDON, NOV. 14, 1870.

Messrs. S. W. HOPKINS & Co.,
London.

Gentlemen:

I herewith offer you four thousand (4,000) Florida State 8 per cent. gold bonds, in aid of the Jacksonville, Pensacola and Mobile Railroad Company, for one thousand
30 ($1,000) dollars, gold, each, at the price of one hundred (£100) pounds sterling for each bond, in the City of London, subject to the commission agreed on as per contract dated 13th day of April, 1870, with your good selves.

I remain, gentlemen,
Yours faithfully,
(Signed) M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.
JACKSONVILLE, P., M. & M. R. R. Co.

[Agreement of 29 August, 1872, Coddington & Jacksonville, &c., Co. Schutte Record, p. 1176.]

31

AN AGREEMENT, made this 29th day of August, 1872, between the Jacksonville, Pensacola and Mobile Railroad Company, by their duly constituted attorney, Converse L. Chase, of the one part, and *Thomas Butler Coddington*, of 9 Kensington Park Gardens, in the County of Middlesex, merchant, of the other part.

Whereas, the said Thomas Butler Coddington claims from the company $25,000, and accrued interest thereon on his own behalf, and also $15,000 and accrued interest thereon due to Colonel R. H. Gamble; and whereas, the said claims, amounting to $40,000, with accrued interest, are alleged to be secured *inter alia* by some of the 210 Florida State bonds now in the hands of Mr. Cobb and Mr. Newman.

32

And whereas, the said railroad company have been negotiating with Mr. Collinson, of London, with respect to 1,200 bonds, including the 210 bonds; and whereas, the said Mr. Cobb and Mr. Newman, having had notice on Mr. Coddington's behalf not to part with the said bonds have refused to do so until such notice has been withdrawn, whereby the said negotiation between the said railroad and the said Mr. Collinson has been stopped.

And whereas, it is to the interest of the said railroad that the said negot ation should proceed, and the said Thomas Butler Coddington, at the request of the said railroad, through their attorney, the said Converse L. Chase, has agreed to and has accordingly withdrawn such notice upon the signing of this agreement;

And whereas, in order to settle the said differences, and for the consideration aforesaid, the said Company and the said Thomas Butler Coddington have agreed to execute this agreement; the parties mutually agree as follows:

33

1. The said Railroad Company shall authorize and direct the National Trust Company of New York (who have been appointed the fiscal agents of the said Railroad Company), by their agent in London, to pay to the said Thomas Butler Coddington, the sum of $40,000 United States currency, with interest thereon from this date, at 7 per cent. per annum, till payment out of the first monies to be paid to such agents by Mr. Collinson, in pursuance of a decree of Court made in two suits of Collinson *v.* Collins, and Jacksonville Railroad Company *v.* Collinson, after paying the sum of £31,800 in the said decree mentioned, or such sum not exceeding $40,000 and interest, as may so be in their hands, or in default of sufficient monies coming to the hands of the said Trust Company, to deliver to the

said Thomas Butler Coddington, the first 192 bonds and coupons attached of the said State, which shall come into the hands of the National Trust Company in pursuance of the said decree.

2. That the said railroad company shall forthwith procure the recognition and acceptance by the said National Trust Company, and also by their agents in London, of the said direction in the first clause mentioned.

3. That the said Thomas Butler Coddington shall have full power to sell the said 192 bonds in order to pay himself the said $40,000 and interest. without further consent from the said railroad company, he, the said Tnomas Butler Coddington, accounting to the company for any surplus beyond such principal and interest and the expenses attendant upon such sale.

4. On payment as aforesaid the said Thomas Butler Coddington shall deliver to the said company coupons of bonds of the Pensacola and Georgia Railroad Company, amounting to $24,465,

JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD,
By C. L. CHASE,
Atty. in fact.
T. B. CODDINGTON,
A. P. BOWER,
His Atty.

[Order in favor of Coddington. Schutte Record, p. 1177.]

TO THE NATIONAL TRUST COMPANY OF NEW YORK:

Out of the first moneys paid after this date by Mr. Collinson, of London, to you as the fiscal agents of the Jacksonville, Pensacola and Mobile Railroad Company, after setting apart the sum of £31,800, you are hereby requested and irrevocably directed to pay to Mr. Thomas Butler Coddington, or his order, the sum of $40,000 United States currency, together with interest thereon at 7 per cent. per annum till payment, or such sum not exceeding $40,000 and interest as may so be in your hands.

Failing payment of the said full amount of the said $40,000 and interest, you are hereby requested and irrevocably directed to deliver to Mr. Thomas Butler Coddington, or his order, the first 192 bonds of the State of Florida, with coupons attached, which shall be delivered to you by the said Mr. Collinson.

Dated this 29th August, 1872.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY.

By C. L. CHASE.

Duly authorized by power of attorney.

[**Decretal Order in Collinson's Suit. Schutte Record, p. 1173.**] 37

IN CHANCERY.

VICE-CHANCELLOR WICKENS.

COLLINSON
v.
COLLINS.

JACKSONVILLE, &C., COMPANY,
v.
COLLINSON. 38

Upon hearing counsel for all parties, except the defendants, F. H. Kleinwort, Edward Cohen, L. Lewis Spring, and the Western Division of the Western North Carolina Railroad Company (against whom respectively the bills in both suits have been dismissed), and upon reading a power of attorney, under the seal of the plaintiff company, in favor of the defendant Converse L. Chase, enabling him to compromise suits on behalf of the company, and an affidavit of the said Converse L. Chase verifying the same, and upon reading an affidavit of the said Converse L. Chase that the National Trust Company of New York have been duly appointed and have accepted the office of 39
fiscal agents of the State of Florida, and of the Jacksonville, Pensacola and Mobile Railroad Company, and it being alleged by counsel that the company, by the said Converse L. Chase, as their attorney, and the plaintiff John Collinson, and the defendants Collins, Hopkins and Carpenter, have agreed to compromise all litigations and questions between them, or any of them, and to determine all existing contracts between them, or any of them, relating to any of the bonds hereinafter mentioned, on the terms embodied in this order, it is, by consent of counsel for all parties ordered, that 224 of the 1,200 Florida State bonds in the pleadings mentioned be delivered to the National Trust Company of New York, and to be by them delivered up to the State of Florida, to be can-

celled against the delivery by the said State to the said National Trust Company of New York, of 224 bonds of the said Railroad Company to be also cancelled, the same having been overissued by them, in respect of a deficiency in the length of the line constructed by the company; and it being alleged that two others of the said bonds have been lost, it is, by consent, as aforesaid, ordered that the remaining 974 of the said 1,200 bonds be dealt with as follows, that is to say, 166 of such 974 bonds be sold and delivered to the said John Collinson, at the rate of £120, and accrued interest per bond, and the remaining 808 of such 974 bonds be deposited as hereinafter mentioned; and the defendant, Converse S. Chase, by his counsel, consenting to receive the purchase money for such 166 bonds, and apply the same, as hereinafter directed, on behalf of the said campany, and also of himself and the defendant Francis H. Flagg, as the trustees of the indenture of the
41 2d of October, 1871, in the pleadings mentioned, it is, by consent as aforesaid, ordered, that on such payment being made, as hereinafter mentioned, by the said John Collinson to the said Converse L. Chase, Thomas Pix Cobb, and George Gunnell Newman, do deliver the 210 bonds, part of such 1,200 bonds, which 210 bonds are deposited in their joint names, as in the pleadings mentioned, to the said John Collinson, to be held by him on the terms hereinafter mentioned.

And it is by consent, as aforesaid, ordered, that the defendant Converse L. Chase, upon such payment being made to him by the said John Collinson, as hereinafter mentioned, do deliver to the said John Collinson 166 bonds so purchased by him, and 22 bonds, making with such 210 bonds 232 of such bonds, to be held by the said John Collinson on the terms hereinafter mentioned, and that on such payment being made, the said defendant Converse
42 L. Chase, do remit to the said John Collinson, to be held on the terms hereinafter mentioned, the remaining 576 of such 1,200 bonds by the first mail leaving New York on or after the 1st October, 1872.

And it is ordered that on such delivery to him of such 166 and 232 bonds, as aforesaid, the said John Collinson do pay the amount of the purchase for such 166 bonds at the rate aforesaid to the said defendant Converse L. Chase, to be applied by him in accordance with such of the trusts of the indenture of the 2d of October, 1871, in the pleadings mentioned, as are applicable thereto.

And it is by consent, as aforesaid, ordered, that the said Converse L. Chase do apply the same accordingly.

And it is by consent, as aforesaid, ordered, that the said John Collinson do, out of the said 232 bonds to be de-

posited with him as aforesaid, retain 40 bonds for his own use in satisfaction of the losses sustained by him by breach of the contracts entered into with him by the defendants Collins and Hopkins & Co., on behalf of the company in relation to the said bonds, or any of them. 43

And it is by consent, as aforesaid, ordered, that the said John Collinson do retain the remaining 192 of such 232 bonds, and also the said 576 bonds (being the balance of the 800 bonds in America after the delivery of the said 224 bonds), when so delivered to him as aforesaid, subject to an option to him, the said John Collinson, to purchase the same or any part thereof at any time within 7 months from the date of this order, at the price of £130 and accrued interest per bond, such price to be paid (subject to the retention thereout by the said John Collinson of any sums of money which he may pay for costs, charges and expenses, to any defendants in the suit of Collinson *v.* Collins, and to any defendants in any proceedings instituted in America by the said John Collinson in respect of the said bonds or any of them), to the agents in London of the National Trust Company, against their receipts for the same as fiscal agents of the company, and to be applied by them in manner following: 44

The first moneys coming to their hands up to £31,800 shall be specially set apart as a fund for and applied by them in payment of the January coupons on all the said bonds already negotiated or which shall hereafter be negotiated in accordance with the foregoing provisions, such interest being for the purpose calculated on 3,974 bonds at the exchange of 108 and a commission of 1 per cent. thereon, and any balance over and above the said sum of £31,800 shall be applied by the said National Trust Company as such fiscal agents for the purposes of the railroad company. And it is by consent, as aforesaid, ordered, that they do pay and apply the same accordingly, the said Converse L. Chase, by his counsel, undertaking that the said National Trust Company shall be legally and fully confirmed in their appointment as fiscal agents of the said company and also of the State of Florida. 45

And it is by consent, as aforesaid, ordered, that the said John Collinson do, at the expiration of such period of 7 months, deliver the 192 and 576 bonds, or such of them, if any, as he shall not so purchase, to the said agents of the National Trust Company as such fiscal agents of the company and for and on behalf of the said company. And it is by consent, as aforesaid, ordered that all bonds hereinbefore ordered to be delivered, be delivered with all coupons subsequent to those due July, 1872, attached thereto.

And it is by consent as aforesaid, ordered, that the bill in

46 the first mentioned suit be dismissed without costs as against all the remaining defendants thereto other than Kleinwort and Cohen, but it is ordered that what the plaintiff, John Collinson shall pay on account of the cost of Kleinwort and Cohen, be refunded to him by the company. And it is by consent as aforesaid, ordered that the bill in the secondly mentioned suit be dismissed without as against the remaining defendants except as against Kleinwort and Cohen, and with costs as against them.

And it is by consent as aforesaid, ordered, that the company forthwith dismiss their suit now pending in New York, without costs, and that the said John Collinson do also dismiss his suit now pending in New York, the said Converse L. Chase undertaking that the several defendants in the same suit shall consent to such dismissal without claiming costs against the said John Collinson. And it is ordered, that the said company do indemnify the
47 said John Collinson against any costs, either of himself or of any person or company, of his suit in New York which he may have to pay.

8. At the foot of the said minutes an agreement was written in the following words:

"We severally agree that a decree in the terms of the above minutes shall as soon as practicable be drawn up and entered, and meanwhile that we will severally be bound as if the decree had been actually drawn up and entered."

And to the said minutes and agreement the following signatures and date were appended:

JOHN COLLINSON,
JANSON, COBB & PEARSON,
His Solicitors.
F. H. FLAGG.
SYDNEY W. HOPKINS.
48
ROBERT J. CARPENTER,
By C. L. CHASE,
Atty. in fact.
JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY,
By C. L. CHASE,
Atty. in fact.
C. L. CHASE.
JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY,
By W. G. M. DAVIS.
FRANK H. COLLINS,
NEWMAN, DALE & STRETTON,
His Solicitors.
A. SCOTT LAWSON.

29 August, 1872.

[Prayer of Coddington's Bill in Suit against the Jacksonville, &c., Co. Schutte Record, p. 1181.]

1. That the agreement between the railroad company and the plaintiff, dated 29th August, 1872, and set forth in the 10th paragraph hereof, may be specifically performed by the railroad company either literally or with no variation which shall not give the plaintiff a first charge on the moneys and bonds mentioned in the first clause of the said agreement (subject only in the case of money to the sum of £31,800) for the sum of $40,000 and interest, or for 192 bonds, as the case may be, as mentioned in the same clause, the plaintiff hereby submitting to perform the said agreement so far as the same remains on his part to be performed.

2. That the defendant, John Collinson, may be restrained from delivering to or to the order of the railroad company or to any other person or persons, the said bonds remaining in his hands without delivering 192 of the said bonds to the plaintiff.

3. That the defendants, or one of them, may pay the costs of this suit.

4. That the plaintiff may have such further or other relief as the nature of the case may require.

J. WESTLAKE.

The names of the defendants to this bill of complaint are the Jacksonville, Pensacola and Mobile Railroad Company and John Collinson.

NOTE—This bill is filed by Messrs. Bower and Cotton, of No. 46 Chancery lane, in the County of Middlesex, solicitors for the above-named plaintiff.

[Extracts from Coddington's petition in U. S. Court, Florida. Schutte Record, p. 1157–1159.]

VII.—That the said railroad company failed to pay said money and never paid any part thereof, and also wholly failed to perform the said agreement. And thereupon your petitioner brought suit in chancery in London, in England, against the said company and John Collinson, as defendant, and filed his bill of complaint in said English Court for specific performance of said agreement.

52 That the said company and the said John Collinson, severally appeared and answered said bill, and that subsequently your petitioner filed a replication, and rejoinder of issue was served on the solicitors of the defendant's company, and that the said suit in chancery in London is still pending and undetermined.

That the following proceedings were had in said Court in chancery in London.

The bill of complaint marked Exhibit No. 1 was filed 26th April, 1873. The answer of the Jacksonville, Pensacola and Mobile Railroad Company was filed 19th May, 1874, marked Exhibit No. 2.

The answer of John Collinson was filed 29th July, 1873, marked Exhibit No. 3.

That T. B. Coddington made and filed the affidavit on the 26th April, 1873, marked Exhibit No. 4.

That Arthur Perry Bower, solicitor, made and filed on
53 the 26th April, 1873, the affidavit marked Exhibit No. 5.

That on the 26th April, 1870, the Court made the order of injunction marked Exhibit No. 6.

That on the 3d of June, 1873, the Court made an order, among other things, requiring the said John Collinson to make affidavit as to the number of said State of Florida bonds in his hands or control. This order is marked Exhibit No. 7.

That on the 19th June, 1873, John Collinson made affidavit that he held 568 bonds, numbered respectively 3201 to 3768, inclusive. This affidavit is marked Exhibit No. 8.

That upon the application of the Jacksonville, Pensacola and Mobile Railroad Company, the Court made an order on the 28th June, 1873, directing that John Collinson deposit in a box to be endorsed, " In Chancery. Coddington *v.* The Jacksonville, Pensacola and Mobile Railroad Company, 1873, C. 102, securities, the 568 Florida State
54 bonds, dated respectfully 3201 to 3768 inclusive, now in his possession or power, together with all coupons thereto attached, and deposit such box in court to the credit of this cause," etc. That the order from which this extract is given is filed herewith, marked Exhibit No. 9.

That John Collinson obeyed said order and brought the said bonds in court, and subsequently the Court, by its officer, had the said box and the said 568 bonds deposited to the credit of the cause in the Bank of England for the better security thereof.

That on the 10th day of June, 1874, as will appear by Exhibit No. 10, an order was made by consent dismissing the said John Collinson as a defendant. And the cause thereafter continued with the said railroad company as the sole defendant before the Court.

That subsequently replication was filed, and that the said cause is still pending before said Court, and the said 568 bonds are still in the Bank of England subject to such future order, direction or decree that the Court may see fit to make in the cause. 55

X.—That on the 15th of November, 1877, a motion was made on behalf of your petitioner in the high court of justice, chancery division, in London, before vice-chancellor Hall in the said suit, "that the said 192 bonds and coupons may be forthwith sold, or that such other order may be made as to the court shall *secure* just, or that such other order may be made as the plaintiff on the admission of facts in the pleadings may be entitled to."

That, on the hearing of the motion on the 15th of December, the vice-chancellor, Hall, refused the motion, and in substance decided that under the practice of the English court the motion prayed for could not be made, but that the disposition of these bonds must abide the final hearing of the cause. 56

XI.—That he has instructed his solicitors to take an appeal from the said decision of the vice-chancellor, made as aforesaid on the 15th of December, 1877, and that he believes that the appeal from said order has been taken, and is still undecided.

[**Agreement for Coddington's Compensation. Schutte Record, p. 1169.**]

PRESIDENT'S OFFICE
JACKSONVILLE, PENSACOLA & MOBILE RAILROAD CO.,
TALLAHASSEE, Fla., Feb. 1, 1871.

Messrs. S. W. HOPKINS & Co.,
London. 57

Gentlemen:

For the risk and responsibility assumed by T. B. Coddington in taking charge of and carrying to Europe one million of the bonds of the State of Florida, issued in aid of the Jacksonville, Pensacola and Mobile Railroad Co. (which bonds were delivered to him by Edward Houstoun for transmission to Europe), and for disbursing the proceeds of the sale of the same, you are hereby authorized and directed to pay the said T. B. Coddington as compensation for the services so performed, out of the funds of the sale of said bonds, a commission of two and one-half ($2\frac{1}{2}$) per cent. on the par value of said bonds; provided T. B. Coddington surrenders to you for my account all its

58 past due coupons held by him of the Pensacola and Georgia Railroad Co., amounting to about the sum of $24,465.

Truly yours,

(Signed) M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

[Interrogatories to T. B. Coddington. Schutte Record, p. 1086.]

IN THE UNITED STATES CIRCUIT COURT,

NORTHERN DISTRICT OF FLORIDA, FIFTH JUDICIAL CIRCUIT,

In Equity.

59

J. FRED. SCHUTTE, JANS PRINS, ADRIANUS PRINS, HEINRICH ULRICI, ELIAS FULD, and others

AGAINST

THE WESTERN DIVISION OF THE WESTERN NORTH CAROLINA RAILROAD COMPANY, and others.

INTERROGATORIES to be propounded to Thomas B. Coddington, a witness to be examined *on behalf of the com-*
60 *plainant* in the above entitled cause, who resides in the City of New York and State of New York:

[Heading of deposition of T. B. Coddington. Schutte Record, *p.* 1131.]

DEPOSITION OF THOMAS B. CODDINGTON, a witness produced and sworn and examined the 18th day of February, A. D. 1879, at my office, in the Post-office building, in the City of New York, under and by virtue of a commission issued out of the Circuit Court of the United States, for the Northern District of Florida, in a certain cause therein depending and at issue, wherein J. Fred Schutte, Jans Prins, Adrianus Prins and others are complainants, and The Western Division of the Western North Carolina Railroad Company and others are defendants.

THOMAS B. CODDINGTON, of New York City, aged 64 years of age, being duly and publicly sworn, *on the part of the complainants*, doth depose and say, as follows: 61

FIRST.—To the first interrogatory he saith: Thomas B. Coddington; age, 64 years; occupation, merchant; and reside at 42 Fifth avenue, New York City. * * *

[Extract from T. B. Coddington's answer in Western Div. Suit, made evidence by Schutte and ors. Schutte Record, pp. 1136-7.]

This defendant saith:

FIRST.—That he absolutely denies all, each and every charge of fraud or of fraudulent intent alleged against him by the complainants, and avers that the whole of the transaction, and each and every act (relative to the bonds 62
which are the subject of this suit), were, so far as they were done by this defendant, *or so far as he had any knowledge of them*, and so far as this defendant was connected with them, *good, honest, fair, legitimate and lawful acts*, legally and morally; and that this defendant's whole connection with these bonds were had for a good and lawful purpose, and, as this defendant then believed, for the benefit of the parties in interest, and the result, this defendant believed, would eventually be, that the line of railroad would be built, to the great benefit of the people and the State of Florida; this defendant was also informed, and he believed it, and he acted upon that belief, that the State of Florida had by law authorized the Governor to exchange State bonds for the bonds of the railroad companies, and that S. W. Hopkins & Co. had sold in England State bonds that were then authorized to be issued, and had agreed to deliver to the purchaser four 63
millions of said State bonds at a given time; and further, that it was essential for the consummation of the contract that the bonds should be delivered as stipulated, and that Edward Houstoun would, it was supposed deliver one million of said bonds to this defendant, in trust for him, if this defendant would accept the trust, and that the receipt and delivery of this million of bonds held by Houston was the obstacle in the way of realizing the money from the sale of the bonds, and that if this million of bonds could be delivered in time to complete the contract of sale in London, that the whole enterprise would be a success and the railroad would be speedily constructed westward as designed by the legislative authority.

64 **[Petition of T. B. Coddington in U. S. Circuit Court, Florida. Schutte Record, pp. 1154–1171.]**

To the Judges of the Circuit Court of the United States for the Fifth Circuit and Northern District of Florida, sitting in equity.

Thomas Butler Coddington, merchant, a citizen of the State of New York, residing at No. 42 Fifth avenue, in the City of New York, humbly petitioning, shows unto your Honors:

I.—That there is now pending in this Court certain suits in equity, the Western Division of the Western North Carolina Railroad Company being plaintiff in two of said suits, and J. Fred. Schutte and other holders of certain State of Florida bonds being the plaintiffs in the third
65 suit, said suits being against the Florida Central Railroad Company, and the Jacksonville, Pensacola and Mobile Railroad Company and others.

[Then follows a narrative, the main features of which are stated in other portions of the Schutte record hereinbefore transcribed, the petition concluding as follows]

XXXI.—Your petitioner therefore prays, that the premises considered, your Honors will order and direct:

I.—That your petitioner shall be paid the said sum of forty thousand dollars, with interest from the 29th day of August, A. D. 1872, at the rate of seven per centum per annum, and that your petitioner has a lien on said one thousand bonds from said date until the said sums are paid.

II.—That the sale of the Florida Central Railroad Company shall not take place until your petitioner shall have realized the securities as pledged to him in said agreement
66 of 29th of August, A. D. 1872, or until the said sums of money are paid, together with his costs and expenses in the English Court of Chancery.

III.—That this petitioner shall have such order as to your Honors shall seem meet and just, the premises considered.

And your petitioner will ever pray.

T. B. CODDINGTON,
Petitioner.

D. P. HOLLAND,
Of Counsel.

[**Power to Converse L. Chase. Schutte Record, p. 1246.**] 67

UNITED STATES OF AMERICA.

STATE OF FLORIDA, DUVAL COUNTY.

Be it remembered that, at a meeting of the *directors* of the Jacksonville, Pensacola and Mobile Railroad Company, held, in pursuance to a call made therefor, at their office, in the City of Jacksonville, in the State of Florida, on the twelfth day of April, A. D. one thousand eight hundred and seventy-two, there was adopted the following resolutions, which had been previously adopted by a majority vote of all the capital stock of the *stockholders* of the said The Jacksonville, Pensacola and Mobile Railroad Company, a resolution of said stockholders in the words and figures following, *i. e.*:

"Resolved by the stockholders of the Jacksonville, 68
Pensacola and Mobile Railroad Company, That the president of the said company be, and he is hereby, authorized and directed to cause to be made, executed and delivered to Converse L. Chase, Esquire, a power of attorney, constituting him, the said Converse L. Chase, the attorney-in-fact of the said Jacksonville, Pensacola and Mobile Railroad Company, with full power and authority to proceed to the City of New York, and the State of New York, or wherever else may be necessary for the purpose, and for and on account of the said Jacksonville, Pensacola and Mobile Railroad Company to consider any proposition for settlement and adjustment of any and all disagreements and differences between the said the Jacksonville, Pensacola and Mobile Railroad Company, and *all parties*, *persons* and corporations, or associations, and particularly with the firm of S. W. Hopkins & Co., of New York and London, and in his discretion, for 69
and in the name of the said The Jacksonville, Pensacola and Mobile Railroad Company, to reject or accept any and every, or either, such settlements or adjustments, with powers to alter or modify the same for and on account of the said company, which said power of attorney shall be duly attested under the corporate seal of the company and certified by the secretary thereof.

"Resolved, further, That we do hereby ratify and approve all that our said attorney shall lawfully do by virtue hereof."

Now, therefore, know all men by these presents, that under and by virtue of the foregoing resolutions of the stockholders thereof, the said Jacksonville, Pensacola and Mobile Railroad Company does hereby constitute and

70 appoint the said Converse L. Chase attorney of the said Jacksonville, Pensacola and Mobile Railroad Company, for it and its name, place and stead, to settle and adjust all and every the difference and disagreements of the said company aforesaid with all and every person, parties, corporations, or associations, and particularly with S. W. Hopkins and Co., of New York and London, and generally to do and exercise all and singular the power and authority contemplated in the foregoing resolutions; hereby ratifying and allowing all that our said attorney shall lawfully do by virtue hereof.

In witness whereof the said the president of the said the Jacksonville, Pensacola and Mobile Railroad Company, and the said F. H. Flagg, the secretary thereof, have hereto attached their names and affixed the corporate seal of the said company.

Done at Jacksonville, Fla., this the 13th day of April,
71 A. D. 1872.

[CORPORATE SEAL.] M. S. LITTLEFIELD,
President J., P. and Mobile R. R. Co.

F. H. FLAGG, Secretary.

72

[**Order made on the Petition, p. 47 of Record herein, to be referred to by either party, p. 46, fol. 94.**] 73

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880.

THE FLORIDA CENTRAL RAILROAD COMPANY,
Appellant,
vs.
J. FRED. SCHUTTE ET AL. } No. 667.

74

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY,
Appellant,
vs.
J. FRED. SCHUTTE ET AL. } No. 668.

AND

THE WESTERN NORTH CAROLINA RAILROAD COMPANY,
Appellant,
vs.
GEO. F. DREW, GOVERNOR, &C., ET AL. } No. 669.

75

On petition of T. B. Coddington for a modification of the opinion in this case and for leave to move that the mandate be withheld.

The opinion has already been changed as asked for.

No sufficient reason is shown for granting this petitioner leave to move to withhold the mandate.

His application in that behalf is consequently denied.

March 14th, 1881.

124-515

124-515

JAN 3 1888

No. 90. *October Term, 1887.*

IN THE

Supreme Court of the United States.

Spencer Trask,
Appellant,

vs.

The Jacksonville, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company *et al.*,
Appellees.

BRIEF OF APPELLEES.

A. H. WINTERSTEEN,
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For Appellees.

Allen, Lane & Scott, Printers, Nos. 229, 231, and 233 South Fifth Street, Philadelphia.

Supreme Court of the United States.

Spencer Trask

vs.

The Jacksonville, Pensacola and Mobile Railroad Company, The Florida Central Railroad Company, et al.

October Term, 1887.

No. 90.

STATEMENT OF THE CASE.

The present litigation relates to a part of the same issues of bonds of the Florida Central Railroad Company and the State of Florida that were before this court for consideration in Railroad Companies *vs.* Schutte, 103 U. S., 118. The litigation may be said to be a speculation growing out of the decision in that case. It will be recollected that, as decided there, M. S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Railroad Company, in pursuance of a scheme to defraud the railroad companies, undertaken by him in connection with one Swepson and Edward Houston, procured the issue of $3,000,000 of bonds of the Jacksonville, Pensacola and Mobile Railroad Company, and $1,000,000 bonds of the Florida Central Railroad Company, and had them fraudulently exchanged for bonds of the State of Florida by the connivance of Harrison Reed, then Governor of Florida. The State bonds were sent to Europe for sale. The proceeds of the bonds were intended to be used for the private purpose of these schemers, and whatever moneys were realized

from bond sales actually went into their pockets and those of their coadjutors in the fraud. The issues of State bonds were declared to be unconstitutional and the bonds void. But by reason of their recognition by the railroad companies before the fraudulent scheme was fully understood, the court held that the State bonds were good against the companies when held by *bona fide* purchasers who had obtained them without notice of the fraud. It appeared that one hundred and ninety-seven State bonds of the issue of one thousand numbered from 3001 to 4000, which had been given in exchange for bonds of the Florida Central Railroad Company, had been sold, by the agents of the parties committing the fraud, to purchasers in Holland. The Dutch purchasers were entirely ignorant of the fraudulent character of the bonds, and, by reason of the distance and difference in language between the two countries, did not know, and had no convenient means of knowing, of the fraud. They all paid money for the bonds, some paying as high as eighty-one per cent. for them. The Dutch holders were declared by the court to be *bona fide* purchasers without notice, and entitled to be paid by the railroad company the face value of their holdings. The suit, which is known as that of the Dutch bondholders' case, began in the Circuit Court of the United States by the filing of a bill in equity, May 23d, 1877. It terminated by the affirmance by this court, October Term, 1880, of the decree of the court below and the subsequent sale of the Florida Central Railroad property in pursuance of the decree in February, 1882.

On the 2d of January, 1878, only a few months after Schutte and the other Dutch bondholders filed their bill, Thomas Butler Coddington intervened in the case, claiming a debt of $40,000 due him by the Jacksonville, Pensacola and Mobile Railroad Company, under a certain contract of August 29th, 1872, and a lien upon one hundred and ninety-two State bonds which he alleged had been pledged to him by that company to secure the debt. In his petition for intervention he gave a detailed statement of the source of his claim, and a history of his connection with the issuing and negotiation of the bonds, and prayed that the Florida Central Railroad

should not be sold until he should realize the securities pledged to him, or the debt be paid him. After he had stated his case and been allowed to intervene, voluminous testimony was taken, and much documentary evidence submitted upon the various questions raised in the various interests before the court—the printed record for this court making a volume of fourteen hundred and seventy-two pages. Coddington himself testified at length as to his connection with the transactions and his claim against the company. See his testimony 19th and 21st January, 1878 (Schutte Record, pages 783–791), and 18th February and 19th March, 1879 (Schutte Record, pages 1132–1135). In addition to his personal testimony being given, copies of all papers filed by him, or used by him in that and previous litigations relating to the subjects in controversy, and deemed useful to his claim, were placed in the record, and came to the attention of the court.

See answer of Thomas B. Coddington in case of Western Division of the Western North Carolina Railroad Company *vs.* Geo. F. Drew, Governor *et al.*, Schutte Record, pages 1136–1147, and Exhibits annexed thereto, pages 1148–1154. See also Petition for intervention in Schutte case, pages 1154–1171, and Exhibits annexed thereto, pages 1171–1187.

At the time of filing his petition for intervention in January, 1878, he was in the midst of litigation in Great Britain over the one hundred and ninety-two bonds, and had not at that time reduced them to possession. He obtained possession of them by order of the English Court of Chancery in June, 1878, as stated in his testimony. (Schutte Record, page 1133.) This was almost a year before the hearing of the case by the Circuit Court. At the time of final hearing, therefore, which was held before Mr. Justice Bradley, sitting as Circuit Justice, May 19th to May 31st, 1879 (Schutte Record, page 557), Coddington stood on the record before the court as the holder of one hundred and ninety-two bonds of the same issue as some of those of the Dutch bondholders. His claim to a lien upon the Florida Central Railroad property, growing out of his holdings, was entitled to, and we must believe received, as full consideration by the court as was given the claim of the

Dutch bondholders who held one hundred and ninety-seven of the bonds.

The opinion of the court was given declaring merely the one hundred and ninety-seven Schutte bonds as entitled to a lien on the Florida Central Railroad, and thereby impliedly, but at the same time plainly, denying the claim to a lien for his one hundred and ninety-two bonds, set up by Coddington.

Before the sale under the decree accompanying the opinion, the cases were appealed to this court, where, after elaborate arguments by counsel, and a careful examination by the court, the decrees were affirmed and the appeals dismissed. Upon the filing of the opinion of this court, and before the mandate issued, Coddington presented a petition to the court (Record, page 47), again stating his case and praying that because of its equities the mandate should not issue to his prejudice. The petition was denied by the court. Thereupon, with the decision of this court against him determining the invalidity of his bonds, Coddington as a last resort sold them, and succeeded in getting the present plaintiff in error as a purchaser. They were sold at auction and bought by Spencer Trask, September 12th, 1881. (Record, page 17.) Notice of the illegality of the bonds was duly read at the sale by the counsel for the Florida Central Railroad Company. (Record, page 20; page 13, folio 32.)

Immediately upon his purchase, Trask filed the present bill and, upon application to the court, delayed the sale of the road under the decree until 1882. (Record, pages 8–9.)

The Circuit Court, seeing no equity in the bill, permitted the sale to be made, as stated, in February, 1882, and the case proceeded to hearing on bill, answers, and proofs, and resulted in a dismissal of the bill April 19th, 1884. The present appeal was then taken.

The facts in detail connected with the issue of the Florida Central Railroad bonds, and the fraudulent issue and delivery of the State bonds given in exchange for them, are fully stated by this court in 103 U. S., 118. They will be referred to hereafter in the course of the argument.

ARGUMENT.

The obvious and conclusive defense to the claim made by the plaintiff in error that, as a holder of one hundred and ninety-two bonds, he is entitled to a first lien upon the property of the Florida Central Railroad Company, is that *he is not a bona fide purchaser of the bonds for value without notice of their fraudulent issue.* Because of the fact that they were *bona fide* purchasers without notice, and because of that fact alone, this court declared the Dutch bondholders entitled to their lien. The position of the present claim is radically different, and this has been decided.

I.

Its Status as an Invalid Claim is Res Judicata.

The claim in the hands of Spencer Trask is, of course, the same as that originally asserted by Coddington. It is not disputed that Trask purchased the bonds from Coddington, in 1881, at public sale, after due notice of their invalidity, and of the defense of the defendants in error, based upon it. (See Record, pages 12–13, folio 32.) This he himself acknowledges. (Page 20.) The same defense that existed to the claim in Coddington's hands may, therefore, be made to it in Trask's. But the court has already considered and passed adversely upon Coddington's claim. We have seen that Coddington intervened as a claimant in the Schutte case as early as January, 1878; that he subsequently gave very full testimony setting out the merits of his claim; that before the hearing in the Circuit Court he had possession of his bonds, and was therefore in a proper position to have his claim acted upon; that the Circuit Court declined to recognize it; that this court affirmed the decree of that court; that he then presented his petition directly to this court, again fully stating his case, and praying that the mandate of the court might be stayed because of his alleged equities; and that the court refused the prayer of the petition, and issued its mandate, upon which the Circuit Court acted in directing the sale of the property

in payment of the liens of the Schutte bondholders alone. There are here all the elements of an estoppel by *res judicata* within the definition given by this court:—

"A judgment or decree set up as a bar by plea, or relied on as evidence by way of estoppel, to be conclusive must have been made, 1. By a court of competent jurisdiction upon the same subject-matter; 2. Between the same parties; 3. For the same purpose."

Aspden *vs.* Nixon, 4 How., 467.

In the Schutte case, as will be recollected, the subject-matter was the *bona fides* of the holdings of the Dutch bondholders, and then of those of Coddington, who intervened. The latter is the only subject-matter here. The parties were practically the same in that as in this case (the plaintiff in error, Trask, merely standing in the shoes of Coddington). The purpose of the inquiry in each case was, *inter alia*, to give to the one hundred and ninety-two bonds held by Coddington, if they were entitled to it, a lien upon the property of the Florida Central Railroad Company, and to have established the just equities of the complainant and that railroad company which grew out of the issue of the $1,000,000 bonds of the company, and the exchange of State bonds for them in 1870 and 1871. If it is objected that it does not appear that Coddington was represented at the hearing of the Schutte case before the Circuit Court in 1879, it is sufficient to answer that with his position on the record as a claimant *he might have been so represented.* "An estoppel by judgment (or decree) in a former action arises when the same matter was at issue therein, and was either litigated by the parties and determined, *or it might have been litigated and a decision had upon it.*"

Smith *vs.* Smith, 79 N. Y., 634;

Stowell *vs.* Chamberlain, 60 *Id.*, 272.

If Coddington failed to press his claim by counsel at the hearing of the Schutte case, that was his own fault. His very failure to do so throws some light upon his position as a speculator in the litigation. He refrained from a presentation of the merits of his case before the court at the hearing of

the Schutte case, we must believe, that the court might be able to establish the *bona fide* status of the issue of bonds in question without a too great prominence before it of the irregularities connected therewith—a prominence that would only be invited if the agent or instrument of the parties who were directly responsible for the fraud should insist too vehemently upon his pay for his services in the form of a lien of bonds they had assumed to give him as security therefor. When once this court had affirmed the lien of the bonds in the hands of the Dutch holders, Coddington was quick to demand the same status for his bonds. But this status the court properly decided could not be given him.

There is no room for the theory that the Circuit Court and this court, in directing a sale of the Florida Central Railroad for the lien of the bonds held by the Dutch claimants alone, overlooked or did not pass upon the status of the Coddington bonds. The claim of the lien of these bonds was boldly made before both courts. The road could not have been permitted to be sold without possible injustice to the purchasers unless the claim when once made were passed upon. In fact this view was urged by Coddington in his petition to the court for a stay of its mandate after the decision of the Schutte case, and was definitely considered at that time. (Record, page 52, folio 105.)

It was objected by Coddington, in his petition to this court for a stay of the mandate in the Schutte case (Record, page 51), and is urged again in argument of the present appellant, that the equities of the one hundred and ninety-two bonds were not fully before this court at the time of the hearing of the Schutte case on the appeal. It is charged that this was brought about by the omission of certain important papers from the record relating to the claims. It happens as matter of fact, however, that the only papers relating to these bonds that were omitted from the record, were three formal orders of court relating to the admission of Coddington as a party defendant. (Schutte Record, folio 4043, 4044.) That these

were of no importance as bearing on the merits of the claim, is tacitly conceded by the appellant in omitting them from the present record as made up with his approval. It will be found, too, that the present record adds nothing whatever to the matter found in the printed record of the Schutte case, excepting the new pleadings made necessary by the change of ownership of the bonds, and a renewed disclaimer by Coddington of knowledge of fraud in the issue of the bonds. Indeed, Trask's whole case, as proven by Coddington, his only witness, is practically made out by the latter's adoption of his own testimony in the Schutte case. (Record, page 15; Schutte Record, pages 783–791, 1132–1135, 1136–1154.)

With this testimony, and all the papers referred to in it, before the court in 1880 when the Schutte case was decided, and when, later, the court, upon petition filed containing a re-presentation of the same alleged equities, declined to delay its mandate because of the want of merit in the claim, there is a palpable estoppel against further assertion of it. The only difference between the claim as now urged and that already decided is, that the party pressing it is another holder, who purchased it with full notice. Of course the court cannot dignify a speculation such as was Coddington's sale and Trask's purchase of these bonds by according the claim further attention than that of a summary dismissal.

The case might well be rested at this point, but the apparently serious consideration by the appellant of the merits of his claim seems to invite some attention to its merits by the appellee. It is submitted that the facts will establish the two additional propositions,

II. CODDINGTON WAS NOT A BONA FIDE PURCHASER OF THE BONDS FOR A VALUABLE CONSIDERATION.

III. HE WAS NOT SUCH A PURCHASER WITHOUT NOTICE OF THEIR FRAUDULENT ISSUE.

Of course the establishing of either of these positions defeats the appellant's claim.

II.

CODDINGTON WAS NOT A BONA FIDE PURCHASER OF THE BONDS FOR A VALUABLE CONSIDERATION.

The main facts of the issue of the $1,000,000 Florida Central Railroad bonds for private purposes, their fraudulent exchange for State bonds, the hurried conveyance of these latter bonds to England for sale, and the subsequent sale of some of them to Dutch bondholders who were successfully kept in ignorance of the fraud, have already been found by this court. Certain of the facts are not in dispute. Coddington personally took these bonds to England as agent for some one or more of the parties committing the fraud, under an agreement to deliver the bonds to a firm of brokers known as S. W. Hopkins & Co., after he should be paid certain sums of money in discharge of certain alleged liens upon the bonds which Coddington's principals had agreed among themselves should be paid from their proceeds. Among these prior liens agreed upon was that of Col. R. H. Gamble for $15,000. (Record, page 55.) Coddington was to get $25,000 for his services. He delivered the bonds to S. W. Hopkins & Co. without getting moneys from them to pay the liens, the delivery in this way being in accordance with later instructions from one of the parties, Edward Houston, for whom alone he professed to be acting as agent. Gamble subsequently sued Coddington for delivering the bonds without paying his alleged lien, according to agreement, and recovered a judgment which was compromised by a payment of about $15,000. Coddington claimed to have a lien upon the one thousand bonds for $15,000 due to Gamble and for his own unpaid compensation of $25,000, making in all $40,000. Of the one thousand bonds two hundred and twenty-four were returned to the proper authorities of the State of Florida and canceled, and five hundred and sixty-eight were placed in the Bank of England by order of the Court of Chancery, to wait the determination of certain litigation as to the party entitled to their possession. (Schutte Record, page 1160.)

On the 29th of August, 1872, the Jacksonville, Pensacola and Mobile Railroad Company, by its attorney, agreed to pay Coddington the sum of $40,000 out of a certain fund, and in default of such payment to deliver to him one hundred and ninety-two of the said bonds as security for its payment, with power of sale. (Record, page 50; Schutte Record, pages 1155–1156.) By proper legal proceedings in the English Court of Chancery, Coddington secured possession of the one hundred and ninety-two bonds in suit, and, not being paid by the Jacksonville, Pensacola and Mobile Railroad Company the $40,000 agreed upon, claimed for the bonds a lien upon the Florida Central Railroad before the Circuit Court for the Northern District of Florida and before this court, and the claim was not allowed. He subsequently, under the power of sale mentioned in the agreement of August 29th, 1872, sold the bonds in payment of the debt, and Spencer Trask bought them for $28,800. (Record, page 19.)

Upon these facts alone, as made out from Coddington's own testimony, he was not a *bona fide* purchaser for value. It is elementary law that he is not a *bona fide* purchaser for value of negotiable securities who takes them *merely as security for a past debt.*

"To constitute a *bona fide* purchase for a valuable consideration, the sale must be for a new consideration, and the transfer of property merely as a new security for old debts and liabilities, without extinguishment or surrender of such debts or of the old securities therefor, is not sufficient."

Story, J., in Morse *vs.* Godfrey, 3 Story, 364;
Dickerson *vs.* Tillinghast, 4 Paige, 214;
Petry *vs.* Clark, 11 S. & R., 377;
2 White & Tudor's Lead. Cases in Eq., 33, 83.

The case of Garrard *vs.* Pittsburgh and Connellsville Railroad Company, 29 Penna. St., 154, was analogous in some of its features to the present. The bond of the railroad company, payable to bearer, was handed to Garrard as collateral security for the private antecedent debt of the president of the company. Said the Chief Justice of the court in giving the opinion, "There is no evidence to show that any valuable

consideration passed from Garrard at the time of the delivery of the bond to him. It is not pretended that he paid anything for it, nor is it alleged that he received it in payment of the pre-existing debt. It was received merely as collateral security for it, without any agreement whatever to forbear, or to extend the time of payment. His right of action was not suspended for an instant. If he loses the bond he sustains no actual loss, because he was left in the condition he was in before he took it. * * * * * The law of Pennsylvania is well settled, that the holder of a negotiable instrument, received merely as collateral security for a pre-existing debt without any new and distinct consideration, is not a holder for a valuable consideration." See also Ashton's Appeal, 73 Penna. St., 153, 162. It is held in some of the States, among which are New York, Massachusetts, Illinois, Tennessee, and California, that taking a negotiable paper in *payment* or satisfaction of a pre-existing debt, equally with the taking it as *collateral security* therefor, does not make the holder a purchaser for value. (2 White & Tudor Lead. Cas. in Equity, 4th Am. Ed., page 86.)

It is not necessary, however, for us to rely upon this class of decisions, for it is not only plain from the contract of August 29th, 1872 (Appellant's Brief, page 31, and Schutte Record, page 1176), that Coddington obtained the bonds merely as collateral security for the pre-existing debt, but he himself in his Petition to this court (Record, pages 47 and 50, folio 102), acknowledges that the agreement for his acquisition of the bonds was upon that basis. He states in the petition, referring to the agreement of August, 1872, that for certain consideration the Jacksonville, Pennsacola and Mobile Railroad Company agreed "to pay your petitioner (Coddington) $40,000 and interest out of a particular fund in New York, and in case of not so doing, to give your petitioner one hundred and ninety-two bonds as a *pledge and security to pay said sum, with power in your petitioner of sale.*"

The debt of $40,000 was, without doubt, a pre-existing debt, for if it was a debt at all, it was due when the services of Coddington were completed by his delivery of the bonds

to Hopkins & Co. April 18th, 1871. (Record, page 34, fols. 70, 71.) Indeed, so far as the alleged debt was based upon the $15,000 lien which Littlefield, Houston, and Coddington in their arrangement among themselves undertook to give to R. H. Gamble (Record, pages 55 and 56), it was of the much earlier date when the consideration (if there was any such consideration) for the agreement for the lien passed from Gamble to Littlefield. This was some time prior to the execution of the papers of January 11th and January 12th, 1871. (Pages 55 and 56.)

The agreement executed August 12th, 1872, is at best the acknowledgment of a prior debt.

It is of course idle for the appellant to argue that Coddington was a purchaser for value of the one hundred and ninety-two bonds given him as collateral security for his debt because of the "new consideration" of his surrender of his claim to a lien upon the two hundred and ten bonds held by Messrs. Cobb and Newman. (Schutte Record, 1155.) It is plain that if this be a new consideration sufficient to constitute Coddington a *bona fide* purchaser, all that is necessary in any case to constitute a claimant to a lien of certain bonds of a spurious issue a *bona fide* purchaser of them, is first to set up a claim to a lien upon other bonds of the same issue and then, upon demand, relinquish the claim of lien first asserted for the sake of the technical advantage secured thereby. It is true that the placing oneself in a worse position than before, by relinquishing a claim, has been held to make a *bona fide* purchaser of him who accepts as consideration for such relinquishment an agreement to pay a sum of money, coupled with collateral security for its payment. But it is submitted that the party relinquishing the claim first asserted *must in fact put himself in a worse position*, before the abandoning of it can constitute a new consideration for a subsequent engagement. Now it happens that Coddington's claim to a lien upon the two hundred and ten bonds, as it stood before the agreement of August 12th, 1872, was signed was perfectly worthless, so far as it gave title to them as against the Florida Central Railroad Company. He

was at that time merely a claimant upon what appeared to be certain property of the Jacksonville, Pensacola and Mobile Railroad Company, namely the bonds of the Florida Central Company, which the president of the former company was attempting to sell. His claim was based upon a pre-existing debt for services rendered to the Jacksonville, Pensacola and Mobile Company, or rather to Edward Houston, whose sole agent he claimed to be. Even had he succeeded in getting possession of the two hundred and ten bonds from Cobb and Newman, they would have been worthless against the Florida Central Railroad Company, because at best he would have been merely a holder of them to secure payment of a past debt due from another company. His holding of the bonds would have had none of the elements of a *bona fide* purchase for value. Independent of the agreement of August 12th, 1872, therefore, his claim against the Florida Central Company was a mere worthless speculation without equity. He surrenders this worthless claim for an agreement of the debtor company to pay the debt and to give him some other spurious bonds as collateral. As a matter of fact he sacrifices nothing for the new agreement, because the claim surrendered was equitably worthless. There is no rule of law or equity which makes such a surrender a "new consideration" sufficient to give him subsequently the status of a *bona fide* purchaser.

It must not be overlooked, too, that the debt which was acknowledged by the agreement of August, 1872, was a personal debt of Littlefield or Houston, according as Coddington acted as the agent of one or the other of those persons, or, if they be held to have acted with authority of the Jacksonville, Pensacola and Mobile Railroad Company, the debt was at best the debt of that company. In the hands of the Jacksonville, Pensacola and Mobile Railroad Company these bonds would be valueless as against the Florida Central Railroad Company. This has been directly decided. (State *vs.* Railroad, 15 Fla. 724.) Coddington's acquisition of the bonds from the Jacksonville, Pensacola and Mobile Company for a pre-existing debt, simply gives him the status of that company, which is a valueless status so far as the present claim is concerned.

III.

CODDINGTON WAS NOT A PURCHASER WITHOUT NOTICE OF THE FRAUD.

Considerable pains have been taken by the appellant to have the record show that Coddington was wholly innocent of complicity in the fraud upon the Florida Central Railroad Company which has already received the scathing rebuke of this court. The necessity for full and explicit testimony before even any doubt of his active connection with the fraud could be harbored, was apparent from the fact that this court in its opinion in the case of Railroad Companies *vs.* Schutte, originally found as a fact that the one thousand State bonds were *clandestinely* removed from Florida for sale abroad, and that Coddington was the person who clandestinely removed them. The word "clandestinely," although used in the opinion of the court when delivered, does not appear in the printed opinion in the case as found in the series of United States Reports. It is presumed the word was omitted in compliance with the prayer of Coddington's petition. (Record, pages 47, 53.) It is, however, the fact that this court has already found upon substantially the same facts as those now before it, that the bonds were clandestinely removed. And this the facts justified them in finding. It is said by the appellant, as it was charged by Coddington in his petition to this court, that the case in 15 Florida which the court followed in the Schutte case in finding some of the facts, was partially made upon an agreement between the parties as to what Coddington would testify, which was not in accordance with the truth. (Record page 52, fol. 104.) The agreement of the parties in 15 Florida, as to Coddington's testimony relating to the removal of bonds from Florida, and his actual testimony on the point as found in the printed record of the Schutte case, are here placed side by side.

15 Florida, 721.

"Defendant, Florida Central Railroad Company, can prove by T. B. Coddington that the bonds of the Florida Central Railroad Company were delivered by him to the State of Florida and he received the bonds of the State; *that the transaction was secret, and to avoid legal interruption of the same, he took a carriage and proceeded beyond the limits of Florida;* that all this was done without the knowledge or consent of this company."

Schutte Record, page 1080, folio 2387.

And this defendant having received the above instructions from the said President Littlefield, and the Governor of Florida and the said Houston being fully advised thereof and assenting thereto, this defendant having first, personally, bade good-bye to all the parties, was making his arrangements to return to New York by the railroad from Tallahassee, and so informed the president of the road; thereupon, President Littlefield directed this defendant to go by the way of Thomasville and Charleston; *and the said Littlefield informed this defendant that he* (President Littlefield) *had provided a carriage, and that for the safety of the bonds he, Littlefield, would send him by his carriage* (accompanied by his secretary) *to Thomasville, Georgia, where this defendant could take the rail, and that his secretary, for safety* to the bonds, would accompany this defendant as far as Charleston. That, as directed by the said Littlefield, this defendant went in the said carriage to Thomasville, and thence by rail to New York; and that the secretary of the said Littlefield did accompany this defendant as far as Charleston from Tallahassee.

Schutte Record, page 791, folio 1745.

Littlefield, president of the railroad company, provided a carriage, and sent his secretary with me from Tallahassee to Thomasville, and thence by rail to Charleston, South Carolina, *as he said, for the safety of the bonds, as he said he did not know but that some other parties having claims against the road might get out an attachment* and institute other suits.

There can be no doubt, from these extracts from Coddington's own testimony in the case, both that the Supreme Court of Florida was right in finding that Coddington removed the bonds *secretly* from Florida, and that this court was right in finding the same thing that he removed them *clandestinely*.

After the court had found the fact of the clandestine removal of the bonds through Coddington's agency, he proceeded to testify at some length in the present case that he was completely innocent of the true nature of the transaction in which he was engaged. Although there is much in the case to warrant the presumption that if he was ignorant of the frauds, his ignorance was merely one of convenience, it may be conceded for argument's sake that in the absence of direct testimony bringing home to him actual notice, his denial of such actual notice is entitled to more or less weight. Waiving, therefore, further consideration of whether or not he had actual notice, the facts of the issue, delivery, and litigation over the Florida Central Railroad bonds and the State bonds given in exchange for them may be considered for the purpose of showing that *he had such constructive notice* as to deprive him of all equity.

Constructive notice is evidence of notice, the presumption of which is so violent that the court will not even allow of its being contradicted.

1 Story's Equity Jurisprudence, 402.

It is believed the case as made by the records fully establishes constructive notice.

The position assumed by Coddington throughout the litigation has been that he was acting solely or principally as the agent of Edward Houston, and that his acquisition of the one hundred and ninety-two bonds in suit was as security for the payment of his compensation for services rendered to Houston in taking the bonds to Europe. (Record, page 38, folios 77 and 78.) Houston was notoriously conspicuous in these Florida railroad frauds, and was one of the chief instruments in having the bonds issued and their proceeds diverted from their rightful purpose. It was he and Littlefield who devised and carried through the scheme of issuing $1,000,000 bonds

to be used to pay or secure his private debt and for other private purposes. It would seem that his confessed agent should stand in the same legal position as he against whom *mala fides* is completely established. But, this aside, Coddington had constructive notice of the fraud in many ways.

1. *He had knowledge of injunction proceedings in Florida which charged the fraud, and he violated the injunction granted under them and in force at the time in taking the bonds out of Florida.*

On the 6th of January, 1871, which was several days before Coddington received the Florida Central Railroad bonds and exchanged them for State bonds, Robert H. Gamble and James D. Westcott, Jr., filed a bill in the Circuit Court of Florida in Leon county against Edward Houston and others, deliberately charging an elaborate scheme on the part of Houston and Littlefield to have one million bonds of the Florida Central Railroad Company issued for their own private ends contrary to law, and that such bonds were issued and were wrongfully in the hands of Houston. The bill averred most of the facts that have been found by this court in its opinion in the Schutte case. (See Appendix, pages 76–89; Schutte Record, pages 957–965.)

The court, January 7th, granted an injunction, which was duly served on Houston January 9th, restraining him from in any manner disposing of the bonds of the Florida Central Railroad Company by sale, or otherwise parting with the control of the same to any other person until the further order of the court. (Appendix, page 89.) Coddington knew of this suit, and testified that the injunction was pending at the time of his acquisition of the bonds. (Schutte Record, page 787, fol. 1740.)

Q. At the time you received and exchanged and delivered said bonds, was there or not one or more suits pending, enjoining the receipt or delivery of the same, and, if yea, please state by whom said suits were being prosecuted?

A. There was such suit, or there were such suits, pending by Judge Westcott and Colonel Gamble, and injunctions were pending at the time. Colonel Gamble and Judge Westcott consented that I should take the bonds, and I supposed the suits were dismissed, but learned subsequently they were not.

Coddington knowing of the suit, it is plain upon all equitable principles that he was bound to know its nature and the matters charged in the bill which inaugurated it. He contents himself with the defense that he thought the suits were dismissed. This is a defense which is no defense. He was bound to know that the injunction was actually dissolved before he took the custody of the bonds as agent for Houston, contrary to its terms. And, moreover, knowing of the existence of the suit, and chargeable with notice of its cause, even if the injunction had been dissolved, he was bound to inquire whether or not it had been dissolved on the merits with the charges in the bill disproved or otherwise. But neither was the injunction dissolved, nor even the sworn charges in the bill disproved. If Coddington, knowing of the suit, was bound to know these charges in the bill, constructive notice of fraud is plainly established.

" Much less than actual or particular knowledge in detail is sufficient to convert a person into a trustee who co-operates with a dishonest trustee in an act amounting to a breach of trust. *Constructive notice from the possession of the means of knowledge, will have that effect although the party was actually ignorant, but ignorant because he would not investigate. If anything appears in the course of the investigation calculated to attract attention, or stimulate inquiry, the purchaser is affected with knowledge of all that the inquiry would have disclosed.*"

Burling *vs.* Ricks, 2 Dev. & Bat. Ch., 130.

A purchaser has notice not only of what is definitely communicated to him, but of all that a proper use of that information would have enabled him to ascertain.

2 White & Tud. Lead. Cas. in Equity, 154.

There had been definitely communicated to Coddington on and prior to January 11th, 1871, when he received the Florida Central Railroad bonds, and undertook the mission of delivering abroad State bonds exchanged for them, the fact that a suit had been brought to prevent Houston from delivering the bonds to him. A proper use of that information, by consulting the record of the case of which he is chargeable with notice, would have enabled him to ascertain:—

(*a.*) That the $1,000,000 Florida Central Railroad bonds in question were issued and came into Houston's hands in pursuance of a private scheme or contract between M. S. Littlefield and Edward Houston to have them issued and placed in the hands of Houston as collateral security for a private debt of $163,626.70 of Littlefield to Houston incurred in certain railroad speculations in various Florida railroads not connected with the Florida Central. (Schutte Record, 960, 964; Appendix, pages 81, 84.)

(*b.*) That the purpose of Houston under agreement with Littlefield was to have these bonds exchanged for State bonds, and to hold, sell, or negotiate the latter to pay his debt, turning them over to Littlefield upon its payment.

(*c.*) That Littlefield had agreed to use the bonds to pay other private debts after Houston's. (Appendix, page 86; Schutte Record, 962.)

(*d.*) That the issue of the railroad bonds and the exchange of them for State bonds were only authorized for the purpose of building and extending the railroad, and that therefore such issue for private purposes was contrary to law and a fraud upon the railroad company and the State. (Appendix, pages 90–109; Schutte Record, page 959.)

2. *Coddington had direct knowledge of the public purpose of the acts of the Legislature of Florida under which the State bonds were authorized.* He swore that he understood the $1,000,000 State bonds which he received were issued under the statutes of 1869 and 1870. (Record, page 32, fols. 67 and 68.) These acts only permitted the issue of bonds for improving the railroad property. (See Appendix, pages 90–109.) His acceptance of the carriage of the bonds to London under the circumstances in which he went was therefore a knowing diversion of securities from their proper use.

3. *The hasty and unusual method of removing the State bonds from Florida by private and secret conveyance was suspicious, and was itself sufficient to make Coddington chargeable with knowledge of everything that the proper following of the lead of such suspicions would have disclosed.* Had it not been, as he thought, to his interest to accept blindly and without

question the mission of transporting the bonds to Europe for his employers, it can scarcely be pretended that he would have gone with the bonds from Florida, by a way which eluded attention, without first knowing that there was no proper reason for detaining the bonds in Florida.

4. *The impeachment proceedings against Governor Reed of Florida begun in 1872 were constructive notice of the fraud.* (See Articles of Impeachment, Appendix, pages 41–44; Schutte Record, pages 397, 398.)

On February 7th, 1872, the State of Florida presented articles of impeachment against Governor Harrison Reed and arraigned him at the bar of the Senate for fraudulently issuing the bonds. This impeachment was proclaimed to the world, and was notice to every person who had anything to do with the bonds thereafter, at least in England and America, where a common language was spoken, and between which countries constant communication as to public affairs was had.

Coddington did not get possession of the one hundred and ninety-two bonds in suit until 1878 or 1879, long after these impeachment proceedings. The very agreement under which he claimed the right to them was not executed till August 29th, 1872.

It is noticeable that Coddington nowhere in the course of his testimony denies knowledge of these impeachment proceedings.

5. *Coddington had constructive notice of the fraud by its wide publication and circulation throughout America and England.*

As early as June 15th, 1870, notice of this "Florida Bond Swindle" was published in the *New York World*, and commented on editorially by that journal. The article published, as testified to by the day editor of the *World*, created a good deal of discussion, and was copied in a number of papers through the country, and referred to by others, and became a subject of general notoriety. The paper was circulated generally across the Atlantic from the London office of the *World*, and other similar publications were made touching the validity of the Florida State bonds. (See testimony of Thomas G. Willson, and Exhibits A and B thereto, Appendix, pages 46–52; Schutte Record, pages 680–3.)

A scheme was first devised by Hopkins & Co. to "fix" the *World* newspaper, and subsequently, in consequence of these publications, and verbal reports of the illegal and fraudulent character of the bonds, it was determined to have the bonds hurried to Europe and sold. They were offered by Littlefield to Hopkins & Co. at fifty per cent. discount. And twenty-eight hundred of the earlier issue of three thousand bonds (not of those now in dispute) were actually sold by Hopkins & Co. (See testimony of Samuel M. Chapman and Exhibits C, D, E, and F thereto, Appendix, pages 52–58; Schutte Record, pages 683–7.)

Notwithstanding the efforts of the schemers to prevent or anticipate the dissemination of knowledge of the fraud throughout England, it became known and generally circulated there before 1871, and those bonds that were actually sold were disposed of by being carried to Holland and floated upon the market through the vehicle of a foreign language. In England the fraud was well known. In February, 1871, E. M. L'Engle, counsel for the Florida Central Railroad Company, wrote to certain Holland bankers a letter detailing all the circumstances of the illegal issue and delivery of the bonds. (Appendix, pages 28–32; Schutte Record, pages 372–5.) The contents of this letter were known in London. (Schutte Record, page 355, folios 720–1.)

In June, 1871, a direct official communication was sent to London by T. W. Brevard, Jr., counsel for holders of first mortgage bonds of the Pensacola, Georgia and Tallahassee Railroad Company, calling attention to facts which made the issue of the bonds in suit unconstitutional, as subsequently decided by the court. (Appendix, pages 32–41; Schutte Record, pages 391–6.)

The fraudulent character of the bonds was so well understood in London that their standing in the market was very bad. Rumors and reports against them were numerous. "In order to meet the reports," said one witness, "a portion of the bonds had to be used to pay the interest on the others before they were sold so as to hold them up in the market. * * It was very difficult to introduce them into the market."

(Testimony of Lawrence P. Bayne, Appendix, pages 44–46; Schutte Record, pages 656, 657.)

At the very time that Coddington obtained the agreement of August 29th, 1872, upon which the plaintiff in error relies, the fraudulent issue of these bonds was so blatant in London that no firm of financiers could be secured to negotiate them. C. L. Chase, representing the Jacksonville, Pensacola and Mobile Railroad Company, wrote General M. S. Littlefield, under date of August 13th, 1872: "I have tried every firm in London, and they will not act. So you see we are in bad odor over here." (Appendix, page 59; Schutte Record, 715. *N. B.*— The date of this letter is printed in the Schutte Record as August 13th, 1877, but a reference to the context Schutte Record, page 702, shows that August 13th, 1872, is meant.) Chase testified that the Florida State bonds had at the time no market value by reason of "the bad reputation of the bonds questioning their legality." (Appendix, page 58; Schutte Record, pages 706, 707.) M. S. Littlefield himself went to Europe to negotiate the bonds. Damaging reports in relation to the Florida State bonds, he testified, had preceded him at every place he went. It was "*impossible to sell the bonds in open market at any price whatever.*" (Appendix, pages 60–61; Schutte Record, page 740.)

All the information, statements, and publications about the fraudulent, illegal, and unconstitutional character of these bonds was accessible to all persons dealing in the same. (Schutte Record, folios 2464, 2711.)

With this accumulation of evidence of the notorious character of this railroad bond fraud, and of circumstances conclusively showing that Coddington fully knew of it, or was chargeable with full knowledge of it, his plea that he was a *bona fide* purchaser without notice is the veriest pretense. No man of common intelligence could have been in Coddington's position and not know of it. He had full means for information as to the status of the bonds. Before he acquired those in suit he had a claimant's interest to use all the means open

to him for obtaining that information, even were it possible to suppose that he did not have the actual information. To give him the status of a *bona fide* purchaser without notice, not only must the evidence tending to prove actual notice and *mala fides* be utterly lost sight of, but all the cumulative presumptions which upon similar states of facts have been declared sufficient to make out constructive notice must equally be ignored.

IV.

The controlling equity in the case adverse to the plaintiff's claim directly grows out of his connection with the fraudulent issue and circulation of these bonds. It was in evidence in the Schutte case that Coddington went to Florida as the agent of S. W. Hopkins & Co., and for a consideration in their interest, to remove these bonds from the State for them. (Schutte Record, pages 873, 1345.) This fact was so found by the Supreme Court of Florida in State of Florida *vs.* Florida Central R. R. Co., 15 Flor., 716. This was after the firm of S. W. Hopkins & Co. were fully advised as to the question of the unconstitutionality of the bonds and the hazard of their negotiation. (Schutte Record, pages 1194, 1195.)

Hopkins & Co., of course, could not lay claim to the status of innocent purchasers. And Coddington was their paid agent contributing to the fraud of the unlawful negotiation of the bonds. In the course of subsequent dealings he got possession of some of the bonds as compensation for his services in the matter. As well could it be claimed that Hopkins & Co., who knew of the fraud, were *bona fide* purchasers as that Coddington, who was their willing agent, was such a purchaser. But it is claimed by the plaintiff in error, as it was asserted by Coddington with some vehemence in his testimony, that he acted solely as the agent of Edward Houston to carry the bonds to Europe. But Edward Houston was himself among the foremost of the conspirators. And Coddington, as it was proven by a witness, acted in the matter in conjunction with Edward Houston, and *participated in the*

arrangement. (Schutte Record, page 582, fols. 1363, 1364.) In any event it is plain that Coddington was either a joint conspirator with the others, or their willing tool, conveniently ignorant of their frauds. Even were the facts not such as to show that Coddington had guilty knowledge of the frauds or means for the acquisition of such knowledge, the policy of the law would itself discourage his claim. He cannot acquire and use against the very company he assisted in defrauding the very instruments which he received as compensation for his services in the perpetration of the fraud. Were it possible for corporation embezzlers to validate fraudulent issues of securities, which would be valueless in their own hands, by making them over as compensation, or as collateral for compensation arranged upon with their convenient tools, who could be innocent of complicity in the fraud if occasion required it, the business of corporation wrecking would assume gigantic proportions. If it were once declared that the agent or employé, by whose means railroad bonds were fraudulently circulated, could take them as salary, or as collateral for salary, and enforce them against the company, to enjoy the fruits of their fraud corporation plunderers would only need to make a proper arrangement with their employé as to division of salary. In this view the recognition of Coddington's claim in the present case would be tantamount to recognizing the right of Houston, Littlefield, and all the other confessed embezzlers to assert it through him. The policy of the law which discourages fraud, and which closes all avenues leading in the direction of fraud, therefore requires that the claim to the validity of these bonds, asserted by any one standing in Coddington's position, be declared invalid.

ANSWER TO ARGUMENT OF PLAINTIFF IN ERROR.

In the statement of the case of plaintiff in error, page 4, it is charged that it was irregular to permit the railroad companies defendants to adopt the answer of the Schutte bondholders.

Clearly whatever irregularity this may have been was waived by the plaintiff in error pleading over by filing a replication without in any manner excepting to the order of the court. (Record, page 56, fols. 121, 122.) It is evident that the course taken by the court at the hearing of the case in the Circuit Court, April 16th, 1884, was by agreement all around.

It will now be convenient to consider the propositions seriously urged by the plaintiff in error in the order in which they are advanced.

1. It may be conceded for purposes of the argument that the decision in Railroad Companies *vs.* Schutte established that the Dutch bondholders were entitled to a lien upon the Florida Central Railroad because they were *bona fide* holders without notice. If it were not for the fact that his *status* is already *res judicata*, and he could prove that he was a *bona fide* purchaser without notice, the bonds of the plaintiff in error would undoubtedly be valid in his hands. His difficulty is just here.

2. Trask is *not* a *bona fide* purchaser without notice. The argument which seeks to place Trask in a better position than Coddington is mainly based on the theory that the notice read by Joseph B. Stewart at the sale of the bonds in New York was not sufficient to put Trask upon inquiry as to the bonds. It is charged that Stewart was an irresponsible person, not representing and without authority to represent the railroad company whose bonds were sold, the Florida Central Railroad Company. This statement is disproven by the Record. The answer of the defendant (Record, fol. 32) plainly and explicitly avers that J. B. Stewart at the time the notice was read at the sale was counsel of the Florida Central Railroad Company. This averment is nowhere denied or contradicted in the testimony, and under the elementary rule of equity practice it must stand as the truth. When the complainant in a bill in equity neither demands nor waives an answer under oath, and the respondent answers under oath, the answer is evidence on behalf of the respondent, conclusive if not contradicted. Conley *vs.* Nailor, 118 U. S., 127. Trask therefore bought after receiving direct notice of the illegality of

the bonds. He was bound to inquire as to the nature of this illegality.

The plaintiff in error indeed concedes that he was chargeable with notice that the bonds offered for sale were, *as State bonds*, irregular; but contends that such notice did not affect the question whether the railroad companies were not bound. Why not? The defense of the fraudulent issue and exchange of the bonds, and negotiation of the State bonds for fraudulent purposes, was made in the Schutte case and failed only because the foreign bondholders were wholly ignorant of the original irregular issue of the bonds. The authorization by the Florida Central Railroad Company of the negotiation of the bonds was held in that case to estop that company from availing itself of the irregularity of the issue only as to those persons who were not proven to have had notice of the irregularity and who relied upon the action of the company in authorizing the sale of the bonds. Here is the wholly different case of a purchaser during or after a *lis pendens*, in which the whole history of this bond swindle was fully exposed, who admits specific notice of the irregularities connected therewith, setting up the argument that the railroad company by once upon a time authorizing the negotiation of the bonds is for all time prevented from contesting their validity after it discovers the fraud and gives notice of it to the purchaser before he invests his money. This is a novel proposition in the law of estoppel. The mere statement of it exposes its fallacy.

3. It has already been shown at length in this brief that Coddington was not a *bona fide* purchaser of these bonds.

The several points made under this head by the plaintiff in error (Brief of plaintiff in error, pages 13–17) need no further answer. It is sufficient to say that they are based on an entire misapprehension of the issue involved in the case. The only point is whether certain bonds of the Florida Central Railroad Company are valid as against it. It is not material whether it, or the Jacksonville, Pensacola and Mobile Railroad Company, or any other party in interest is liable to pay Coddington for his services in carrying the bonds to Europe. It might well be that that liability would exist if a distinct obli-

gation to pay were shown, and yet the bonds obtained by Coddington as security for the obligation be wholly invalid in his hands. The question is not whether either of the railroad companies concerned owed Coddington a simple contract debt for services rendered, but whether his subsequent acquisition of the Florida Central bonds under the circumstances, long after the services were alleged to have been performed, confessedly merely as security for the alleged debt, makes him a *bona fide* holder of the bonds so as to entitle him to a *prior lien upon its property*. It is submitted that nothing advanced in the argument tends to show this.

4. The argument of the plaintiff in error under this head is merely a summary of his prior allegations.

5. That the case is *res judicata* is believed to be fully shown in a preceding portion of this brief. Coddington's petition of January, 1878, was practically a petition of intervention, for it claimed the same rights and remedies as were claimed by the Schutte bondholders. Even if the position of the Coddington bonds was not determined by the decree of the Circuit Court in the Schutte case in 1879, it actually was so determined by the decree of this court, March 4th, 1881, refusing to delay the mandate, after full consideration of all the facts now again presented.

If, however, the case is to be considered on its merits, it is respectfully submitted that no valid claim to a *bona fide* innocent *status* can be made by this plaintiff in error upon the showing of this record and that of the Schutte case which is made part of the present record by stipulation filed. The decree, therefore, must be affirmed.

A. H. WINTERSTEEN,
WAYNE MACVEAGH,
For Appellees.

APPENDIX.

LETTER L'ENGLE TO BOISSEVAIN.

(*Schutte Record, pages 372–375.*)

JACKSONVILLE, Fla., Feb'y 8th, 1871.

Messrs. Holje Boissevain, Bankers, Amsterdam, Holland,

GENTLEMEN:—On December 18th, 1870, Governor Harrison Reed, of Florida, received a telegraphic dispatch from you substantially as follows: "Being negotiating four million bonds issued by your State, the Jacksonville, Pensacola and Mobile Railroad beg to know by telegraph from you whether provision made for payment interest, whatever result railroad traffic. Financial position of State really sound, and bonds undoubted security."

To this dispatch Governor Reed replied as follows:—

"Bonds recently recalled by the company, no provision will therefore be made for interest."

It was hoped that Governor Reed's telegram would have the effect of causing the bonds to be returned, as the railroad companies desired they should be. This has not been done, but on the contrary, more bonds than were then out have been sent to Europe for negotiation, though no money, I infer, has yet been realized. I feel it to be my duty, therefore, to make a statement of facts to you, which I hope that you will lay before others who may be interested with you in the negotiations. When the Legislature of Florida enacted the laws under which the bonds your telegram inquired about were issued, it was believed by the two railroad companies, hereafter named, that the proceeds of the State bonds when sold would be honestly and legitimately applied to the extension, through the western portion of the State, of the lines of railroad already built from the eastern to the middle portion. That extension was so much desired by the two companies owning the completed railroads that they were willing to mortgage, and did mortgage, their roads to the State in order to

secure the issuing of State bonds upon which to raise money to enable the newly-organized company to build said extension. The railroads which so pledged their mortgage bonds to the State were the Florida Central Railroad, sixty miles long, and the Tallahassee Railroad, one hundred and fifty miles long. The former gave its mortgage bonds to the amount of $1,000,000, the latter to the amount of $3,000,000; and this latter road consolidated its line with that proposed to be built westward from the completed road, and the two companies became one, under the name of the Jacksonville, Pensacola and Mobile Railroad Company. But the Florida Central Railroad, commencing at Jacksonville, and running westward sixty miles, was not included in the consolidation. Subsequently, and after three million of the State bonds had been sent to Europe, it was discovered that the president of the Jacksonville, Pensacola and Mobile Railroad, who had been active in procuring the legislation and inducing the completed roads to give to the State their bonds in exchange for the State's bonds which were issued to him, had made, even before he got the bonds, secret contracts with some of his creditors, by which the larger portion of the proceeds were to be diverted from the purposes for which the bonds were issued, and were to be applied in payment of individual debts. This produced such dissatisfaction, and caused such investigations by the companies which had mortgaged their roads to the State, as resulted in both the companies, through their several directories, rescinding the action by which their roads were mortgaged, and recalling the bonds. The million of bonds issued by the State, on the security of a like amount pledged to the State by the Florida Central Railroad, had not then gone into the hands of the president of the Jacksonville, Pensacola and Mobile Railroad, but were held by a party till certain conditions precedent were performed, before delivery to the president of the Jacksonville, Pensacola and Mobile railroad. That million of bonds then were returned to the State, and the bonds of the company, upon the security of which the others were issued, were withdrawn from deposit with the State, and were in the hands of the party already

referred to, to be returned to the company for cancellation, when they were by that party, without the authority or knowledge of the railroad company, or any of its officers, and in violation of the company's resolutions of recall and rescission, delivered to an agent of the president of the Jacksonville, Pensacola and Mobile Railroad, who by influences best known to himself effected with the Governor of the State their re-exchange for the State bonds, which latter were hurriedly and secretly sent out of the State, and to Europe, before any legal process could be obtained for their detention. This re-delivery to the Governor of Florida of the Florida Central Railroad Company's million of bonds is a gross fraud on that company, and none who are advised of it, and buy or advance money on the State's bonds for which they were exchanged, will have any legal or moral right to ask that they receive any benefit or advantage from the security so wrongfully obtained.

The same may be said of the three million of State's bonds issued on the pledge of the same amount of bonds of the Tallahassee or Jacksonville, Pensacola and Mobile Railroad. No one who, having notice of that company's rescission of its action and recall of its bonds, advances money on or buys the State's bonds for which the others were pledged, will have legally, or morally, any *locus standi in curia* as against that railroad company. The creditors and stockholders of the railroad companies will assert their right, resist the wrongs that have been perpetrated and attempted, and seek successfully redress in the judicial tribunals. You have had the above-mentioned action of the railroad companies brought to your notice by the telegram from Governor Reed, who sent it after consulting with the said companies, and at their instance, and you have incurred all the legal disqualifications to urge against the railroad companies any claim based on their supposed suretyship for any bonds of the State.

An examination of the law under which the State's bonds were issued discloses that the Governor has caused half a million more of bonds to be issued than the law provides for. The law allows the issue of $16,000 per mile upon so much

of said roads as may be completed and in running order; only two hundred and ten miles were, when the bonds were issued, completed, and only a mile and a half have been completed since, and no more is being completed. This would allow of an issue at the time it was made of only $3,360,000. Add the liberal allowance of ten miles for side tracks, &c., if such unreasonable construction of the law be claimed, and it legalizes only $3,520,000 of the bonds.

To secure the principal and interest of the Jacksonville, Pensacola and Mobile Railroad Company's bonds (but not of the bonds of the Florida Central Railroad), the law gives the State of Florida a statutory lien, valid as a first mortgage, on that company's road and property, and authorizes the Governor, on failure of the company in any payment of principal or interest, to seize and sell the road at auction, and authorizes the State to purchase and to pay for it with any evidence of indebtedness the State may hold against the road, while every other bidder would, in case of purchase, have to pay cash. This summary process is not applicable to the Florida Central Railroad, but to the other road only. What would be the result in case of failure of the Jacksonville, Pensacola and Mobile Railroad to pay principal or interest on its bonds?

The State, if no resistance or if unsuccessful resistance through the courts were had, might seize, sell, and buy, paying for the purchase with the road's obligations, while the State might not, perhaps could not, or would not, pay her own; nor is there any way known to our system of government by which a State can be compelled to pay its obligations. You will thus perceive the character of the securities offered you, and the taints of fraud that affected them from their first issue, and that still do, and will act advisedly. This communication is made in the interests of the stockholders of the companies whose bonds have, by misrepresentation and bad faith, been obtained and exchanged with the State of Florida for the State's bonds, which you bave been, and may still be, negotiating for. The stockholders do not intend to submit to the fraud which has been attempted on them. They seek to

have the State's bonds brought back, and a re-exchange effected, and it is to that end that this letter is written. Such a course will prevent litigation. Persistence in the wrong will insure it. Attempts may be made to give credit to the bonds by professional and perhaps by judicial opinions from this State, but the facts that I state are incontestable, and I can give you much more and more detailed information concerning the worthlessness of the securities that you are negotiating for, and I will do so if desired. But I have said enough to make discreet men repudiate the securities and abandon negotiations.

I will say further that since the mortgage of the railroads to the State one hundred and twenty-eight miles of the completed road, being all except twenty-two miles on which the State has any statutory lien, have been sold by the United States under a judicial process in their favor, issued from a United States court; thus divesting the company's title, and vesting it in the individual purchaser. That sale of course relieves that much of the road of the lien created in favor of the State of Florida by the mortgage before mentioned. You are at liberty to show this letter to whom you please, and to give it the widest publicity, and will oblige me by acknowledging its receipt. I will presume on a very slight acquaintance, to refer you, touching myself, to Hon. H. S. Sanford (late U. S. Minister to Belgium), at Brussels. Respectfully,

E. M. L'ENGLE,
Of Counsel for the Florida Central Railroad Company.

LETTER BREVARD TO STATES AND CORPORATIONS ARREARS COMMITTEE.

(*Schutte Record, pages 391–396.*)

TALLAHASSEE, Florida, June, 1871.

To Chairman States and Corporations Arrears Committee, 193, 194, 195, Gresham House, London:

SIR:—It is understood here that General M. S. Littlefield, the president of the Jacksonville, Pensacola and Mobile Rail-

road Company, a corporation existing under the laws of Florida, Messrs. S. W. Hopkins & Co., financial agents and representatives of the corporation, and perhaps others in the same interest, are endeavoring, with a prospect of success, to negotiate a sale of a very large number of bonds of the State of Florida, issued under the provisions of the act of the legislature of this State, entitled "An act to perfect the public works of the State," and subsequent acts amending the acts named.

It is only fair that capitalists who have been induced to think favorably of these State bonds as an investment should be informed as to the character of the securities in which they are about to embark their means, and the purpose of this letter is to place you, and through you others concerned, in possession of such facts connected with the history of these bonds, and the law under which they were issued, as it may be to their interest to know.

The Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company were railroad corporations existing under the laws of this State. These corporations having availed themselves of the benefits of the act of the legislature of this State, commonly called the internal improvement act, approved January 6th, 1855, and having failed afterwards to comply with its requirements, by payments of the semi-annual interest and sinking fund due upon the debt contracted on account of the First Mortgage Bonds issued by the companies under the provisions of the said act, these road-beds, property, and franchises were, in accordance with the requirements of the said act, taken possession of by the trustees of the internal improvement fund, and sold after due advertisement, to the highest bidder, on the
day of , 1869. This sale was, in one essential feature, a fraud. The law permitted that the trustees sell either for cash, or for additional approved security, as they might think of most advantage to the fund and the First Mortgage bondholders, to satisfy whose claim the sale was made. In this case the trustees elected to sell for cash, and so advertised to the world up to the moment of the sale.

And the sale purported to be a cash sale. In point of fact, however, the purchasers did not pay cash, but only made partial payment by a surrender to the trustees of about $1,000,000 of the First Mortgage Bonds. The entire First Mortgage debt of the two companies was about $1,473,000, and this payment of $1,000,000 in the bonds left a balance due upon the price bid which was in amount equal to the entire bonded debt of about $473,000, which amount on payment would have been at once applicable to take up and pay off the balance of bonds outstanding, about $473,000 in amount. The trustees, however, delivered possession of the railroad property to the purchasers upon this partial compliance by them with the terms (cash) of the sale. This indebtedness, which has never been paid except in small part (there being still about $300,000 of First Mortgage Bonds outstanding and unsatisfied), has a legal priority, and has been always so recognized by the parties now in possession, through this purchase, as a first lien, anterior to all others now existing, or that may be created upon the property and franchise of the Jacksonville, Pensacola and Mobile Railroad Company (formerly, as will appear hereafter, the Pensacola and Georgia and Tallahassee Railroad Companies). The parties in possession of the property have constantly promised payment, and doubtless have induced persons abroad to believe that they have already paid off this debt. After the sale of the Pensacola and Georgia and Tallahassee Railroads, referred to above, the parties in possession, through this incomplete sale, procured the passage by the legislature of several acts for their benefit, and first among them of the "Act to perfect the public works of the State," approved June 24th, 1869. This act consolidated the Pensacola and Georgia and Tallahassee Railroad Companies, and incorporated the Jacksonville, Pensacola and Mobile Railroad Company, and authorized aid to be given by the State of Florida to the Jacksonville, Pensacola and Mobile Railroad Company, by the issue to the company of bonds of the State to the amount of $14,000 per mile. The act, however, provided that the State, as a condition precedent to the issue of its bonds, should be made secure by a lien to be taken by

the State upon the property and franchise of the corporation for whose benefit this aid was to be given. This was a condition fixed by the act, and with this provision it passed the legislature; and when, some time after the act had passed, it appeared that by its fraudulent enrollment the provisions securing the State had been omitted, and that a forged law had been filed in the office of the Secretary of State, and officially published as a law of the State, certain citizens of the State, property-holders and taxpayers, filed their bill on the chancery side of the Circuit Court of Leon county, Second Judicial Circuit of Florida, praying for an order of injunction against Harrison Reed, Governor of Florida, and against S. B. Conover, Treasurer of the State, and for an order of the court against these officers to restrain and enjoin them from signing, countersigning, or delivering the bonds authorized by this fraudulent law, and from doing any acts whatever under the pretended act upon the ground of the forgery and fraud practiced, in omitting from the enrolled bill the clause which required a security to the State, in the issue of its bonds by a mortgage upon the railroad property and franchise. You will readily perceive, in view of the fact that the balance of $473,000 First Mortgage debt referred to was unpaid, that the purpose in this fraud was to relieve the railroad company of the necessity of paying off its existing incumbrances before getting the benefit of the funds to be raised on the State bonds.

The court acted favorably and at once upon this application, and granted, without hesitation, the injunction prayed for; and so patent was the fraud that no answer was ever made to the bill, and no effort was ever made to dissolve the injunction. So matters rested until the next convening of that great and good body of lawgivers—The Florida Legislature. This next legislature, which assembled on the

day of , 1870, passed an act to alter and amend the aforesaid act, which last act validified and made of force the "Act to perfect the public works of the State," which had been enjoined, except as amended and modified by the last law. Under these two acts Messrs.

Littlefield and associates, parties in present possession of the railroad property, are now endeavoring to raise money upon State bonds. These acts authorized the aid to be given to the corporation, but required, as a condition precedent to the granting this aid, and the delivery of the State bonds, that the State be made secure by a lien, to be taken in the manner pointed out by the acts, on the Jacksonville, Pensacola and Mobile Railroad property and franchise, and of course that corporation could not be in a condition to comply with the requirement and give this lien until incumbrances, already existing and resting on the property, should be removed by payment of the outstanding First Mortgage Bonds of the Pensacola and Georgia and Tallahassee Railroad Companies.

That the statement as to this liability is correct there is not the least doubt; and, in order to show you that it is admitted to be correct, I refer you to the annexed copy of a letter addressed by me to Harrison Reed, Governor of the State of Florida, to whom it was intrusted under the law to see that the State was protected before the delivery of its bonds, and his reply endorsed In both the letter and the pledge endorsed in reply, the position is taken that the unpaid First Mortgage Bonds of the Pensacola and Georgia Railroad and Tallahassee Railroad Companies, outstanding, constitute a first lien upon the railroad property and franchise, and that no issue of the State bonds could or would be made until these lien incumbrances, resting upon the property, should be removed by payment and satisfaction of the First Mortgage Bonds outstanding, after which the company would acquire the power to mortgage unincumbered property to the State. Notwithstanding these admitted opinions of Governor Reed, this solemn, written pledge, and his full knowledge that this First Mortgage bonded indebtedness outstanding against the railroad was unpaid, after quieting the apprehensions of the holders of the unpaid First Mortgage Railroad Bonds by this pledge, he signed at a time when he had lulled suspicion, and delivered the State bonds, thus imposing upon the State a security which he knew to be imperfect. Can you suppose

that a vast indebtedness, placed upon a people already insolvent under these circumstances, will ever be paid?

The principal security which those who may invest in the bonds of this State will have, must be that security which has been given to the State. The principal security for any investment to be made in railroad securities of this State must be the road-bed and franchise. In the light of the past and present history of this State, you cannot rely either upon its willingness or ability to pay a security of the character of these bonds when all the benefits result to stockholders in the corporation. In this case, the chief security being incumbered by prior mortgages, it is clearly the interest of the purchaser of the State bonds to see that such an amount of the money paid as may be necessary be applied to the discharge of this prior indebtedness. The bonds representing this prior incumbrance may be purchased at reasonable rates, but they will not be sacrificed by the holders. In the mean time suit has been instituted and is now pending in the United States Circuit Court for the District of Florida, for the purpose of subjecting the railroad property to sale, unless the original First Mortgage debt outstanding be paid up. You may have been advised that the purchaser of the State bonds will have nothing to do with the corporation, and may look entirely to the State; but a very little reflection must show the error into which this view may lead those who may purchase the State bonds. It is true, a bond of this character is a State bond, and imports a State liability; but the law makes no specific provisions by which the holder of the bond can collect either the principal or interest from the State, and in the absence of such a provision any intelligent lawyer will advise you that the bondholder has no remedy in the courts by which principal or interest can be collected by judicial process from the people or out of their property. And even if such provision existed as a part of the law it could not be enforced in a case where the bonds have been issued by means of a fraud upon that requirement of it which stipulates that the State should have been made secure by a good lien on unincumbered property as a precedent condition.

The sole reliance, then, of a holder of State bonds must be the good faith of the State, and that good faith under all the circumstances connected with the issue of these bonds will not be measured by the letter of the contract, but will be fixed entirely by the value of the security which the corporation has placed in the hands of the State, to indemnify it against loss, and that security should be the road-bed and franchise of the road itself, unsaddled by anterior laws.

I especially direct attention, in connection with this consideration of the State's security, to the provisions of section 13 of the "Act to perfect the public works of the State," which gives to the railroad company the privilege of paying off and discharging the lien taken by the State, at any time before maturity of the debt, in the State's own paper, now immensely depreciated by reason of the great quantity issued during the past few years beyond its capacity to pay. It is very evident, and ought to be patent to every one who will be at the pains to examine this provision, that it is to the interest of the railroad company to depreciate all the paper of the State—to depreciate the very bonds they are now selling, and the moment the bonds shall be sold, Littlefield and associates will become the enemies of the holders; for their interest will clearly be to buy up the paper of the State —these very bonds will answer as good a purpose as any other, and thus relieve their mortgage to the State, and the result will be that the purchasers will be left looking to the State, when the security of the State is gone. Littlefield to-day can force $500,000 of State bonds upon the market and buy them at twenty-five cents, and can with them destroy the State security to the extent of a half million. You may rest assured that to that extent the people will think your bonds should be retired also. You must perceive that it would be great folly to make any investment in the State bonds, unless those investing shall secure an application of a sufficient amount of the money paid, to a settlement of the incumbrances existing on the railroad property on account of the original First Mortgage bonded debt now outstanding.

But even after this shall have been done, it concerns the

interest of capitalists to reflect upon the following facts, additional to those already set forth :—

The people of Florida have not the ability to pay this debt. The legislature which passed the acts referred to did not, to any extent, represent the taxpayers and property-holders of the State, and the legislature which fixed this indebtedness upon the State was notoriously corrupt, and in the interest of a few railroad speculators, not identified even by citizenship with the people of Florida; and these men manipulated the votes of the legislators by corruption so open and flagrant that there are at this time indictments pending in the Circuit Court of Leon county against several of the legislators for receiving, and against General Littlefield for paying, bribes to secure the passage of the very acts under the provisions of which these State bonds were issued.

The whole series of acts, both in and out of the legislature, including and beginning with the sale of railroads referred to in the first part of this communication, connected with the issue of these State bonds, has been dishonest, flagrantly corrupt, and going solely to aggrandize Littlefield, Hopkins, and a few others, their co-schemers and confederates; and it cannot be matter of surprise that the entire property-holding and taxpaying part of the people of Florida are not only adverse but hostile to the payment of a debt which they know to have been put upon the State by the combined fraud of their Governor, their indigent legislators, and a set of sharks and financial free-lances, under the leadership of Milton S. Littlefield, now president of the Jacksonville, Pensacola and Mobile Railroad Company. The people of this State, while they earnestly desire the success of any railroad enterprise which is legitimate and conducted with honesty, would greatly regret if foreign capitalists should make so injudicious an investment as a purchase of these State bonds must be. The State bonds, without the road as a security, available for the benefit of the bondholders (which now is not the case), amount to nothing. And if there be any truth in a report now current that certain persons abroad have been already induced to make advances upon the State bonds, they should require

such legislation to be had as will enable them to get this security. As a matter of course they can, by refusing to advance further, force the corporation to make any just contract within its corporate powers, or that the legislature will authorize. If the holders of the State bonds had the simple authority to exchange securities with the State it would be a great advantage to them. It is certainly advisable, at any rate, that they get all the security they can. One hundred and sixty miles of completed road, after being relieved of its existing incumbrances, can certainly be made a good security for the cost of constructing a road of same distance, and this, with a mortgage also upon the newly-constructed road, will be safe security. I ask that these suggestions may be considered.

Respectfully,

T. W. BREVARD, JR.,
Counsel for Holders of First Mortgage Bonds of P. & G. & T. R. R. Cos.

P. S.—I enclose herewith copies of the acts of the legislature referred to in the above communication, as officially published; also majority report of a committee of the Assembly of the Legislature of Florida, appointed under resolutions of that body to examine and take evidence concerning the conduct of Harrison Reed, Governor, pending proceedings then inaugurated to impeach the Governor upon charges of corruption in office, certain portions of which will be of some interest to you in connection with the history of the railroad manipulations to which reference is made in the above.

TALLAHASSEE, February 21st, 1870.

His Excellency Harrison Reed, Governor of Florida,

DEAR SIR:—On behalf of parties holding original First Mortgage Bonds of the (late) Pensacola and Georgia and Tallahassee Railroad Companies, I have been authorized to institute legal proceedings by an application for an injunction to restrain the issue of the State bonds in exchange for First Mortgage Bonds upon the railroad property, under the provisions of the act of the legislature, passed at its late session,

entitled "An act to alter and amend an act to perfect the public works of the State," the parties whom I represent apprehending that by such issue of bonds as that proposed by the said law their rights of lien would be imperiled. I am satisfied, however, that such proceedings will not be necessary if your Excellency shall agree with me in the following propositions, viz.: (1st.) That the original First Mortgage Bonds of the Pensacola and Georgia Railroad, and the Tallahassee Railroad Companies, which remain outstanding and unpaid, incumber the said property with a lien prior to all others now existing, or that may be created; and (2d.) That there can be properly no issue of First Mortgage Bonds upon the said property until the outstanding unpaid First Mortgage Bonds of the original issue shall be paid up (at the *pro rata* valuation fixed by the sale) and canceled.

I am sure that should your Excellency agree with me in these views, no bonds of the State will be signed and delivered to the parties who are the beneficiaries under the said act, until after a redemption of the outstanding bonds referred to, in which event the right of the new company to rebond the property cannot be disputed.

Very respectfully, your obedient servant,

T. W. BREVARD, JR.

Reply endorsed:

"I concur in the view of Colonel Brevard, and shall issue no bonds under the new law, until the lien upon the road is satisfied."

(Signed) "HARRISON REED,
Governor."

ARTICLES OF IMPEACHMENT.

(*Schutte Record, 397–398.*)

Articles of impeachment, exhibited by the Assembly of the State of Florida, in the name of themselves and of all the people of Florida, against Harrison Reed, Governor of Florida, in maintenance and support of their impeachment

against him for high crimes and misdemeanors in office, for incompetency and malfeasance and conduct detrimental to good morals.

ARTICLE 1. That said Harrison Reed, Governor of Florida, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, unmindful of the high duties of his office, of his oath of office, and of the requirements of the Constitution that he shall see that the laws are faithfully executed, did unlawfully and in violation of the Constitution and laws of the State of Florida, cause to be issued, and did himself sign his official signature as Governor, to a large number of State bonds, to the amount of five hundred and twenty-eight thousand dollars ($528,000) in excess of the amount of bonds authorized to be issued by the act of the Legislature of the State of Florida, entitled "An act to alter and amend an act entitled An act to perfect the public works of the State," approved June 24th, A. D. 1869, approved January 28th, A. D. 1870, with intent then and there to violate the said act, whereby the said Harrison Reed, Governor of Florida, did then and there commit and was guilty of a high crime in office, of incompetency and malfeasance.

ARTICLE 2. That in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, said Harrison Reed, Governor of Florida, unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the State of Florida, and contrary to the provisions of an act entitled "An act to alter and amend an act entitled An act to perfect the public works of the State," approved June 24th, A. D. 1869, approved January 28th, 1870, did then and there, with intent to violate the Constitution of the State and the act aforesaid, and without authority of law, fraudulently, conspire to issue State bonds to the amount of one million of dollars ($1,000,000) for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties and with full knowledge of and consent to said purpose and in collusion with such persons and

parties, for his and their pecuniary benefit, whereby said Harrison Reed, Governor of Florida, did then and there commit and was guilty of a high crime in office, and of incompetency and malfeasance.

ARTICLE 3. That said Harrison Reed, Governor of Florida, unmindful of the high duties of his office, and of his oath of office, in the year of our Lord one thousand eight hundred and seventy, at Tallahassee, in the State of Florida, did cause to be issued and did himself sign his official signature as Governor to one million dollars ($1,000,000) of State bonds, for the purpose of purchasing the stock of the Florida, Atlantic and Gulf Central Railroad Company, for the use and benefit of persons and parties, contrary to and in violation of the Constitution of the State of Florida, and of the laws of the State of Florida, and especially in violation of an act of the Legislature of the State of Florida, entitled "An act to alter and amend an act to perfect the public works of the State," approved June 24th, A. D. 1869, approved January 28th, A. D. 1870, and with intent to violate the laws of the State of Florida, and especially said act, whereby the said Harrison Reed, Governor of the State of Florida, did then and there commit and was guilty of a high crime in office, and of incompetency and malfeasance.

ARTICLE 4. That Harrison Reed, Governor of Florida, in the year of our Lord one thousand eight hundred and seventy, in Tallahassee, in the State of Florida, unmindful of the high duties of his office, and of his oath of office, and in violation of the Constitution and laws of the State, and especially of an act entitled "An act to alter and amend, &c.," did cause to be issued and did himself sign his official signature, as Governor to four million dollars ($4,000,000) of State bonds, for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company, in the State of Florida, having full notice of the fraudulent title of said company to the property of the Pensacola and Georgia and Tallahassee Railroads, and with intent to violate the Constitution and laws of the State of Florida, and especially to the act of the Legislature of the State of Florida entitled "An act to alter and amend an act

entitled An act to perfect the public works of the State," approved June 24th, A. D. 1869, approved January 28th, 1870, whereby the said Harrison Reed, Governor, &c.

TESTIMONY OF LAWRENCE P. BAYNE.

(*Schutte Record, 656–657.*)

FRIDAY, November 1st, 1878—11 A. M.

Present, Counsel as before.

LAWRENCE P. BAYNE, a witness for complainant, being duly sworn, in answer to questions by complainant's counsel, says :—

Q. 1. Please state your name, age, and occupation.

A. Name, Lawrence P. Bayne; age, sixty-four years; occupation, negotiator and broker.

Q. 2. Do you, or not, know a body corporate called the Jacksonville, Pensacola and Mobile Railroad Company?

A. I do know the Jacksonville, Pensacola and Mobile Railroad Company existing in the State of Florida.

Q. 3. Did you, or not, at any time undertake or agree to negotiate any securities for or on account of said company? and if yea, please state when it was, at whose request you acted, and the nature of the securities.

A. I did; it was in the year 1870. I acted at the instance of Milton S. Littlefield, the president of the said company; the bonds were issued or to be issued by the State of Florida to the said company, of which Littlefield was president.

Q. 4. Did you, or not, negotiate said bonds, and were the same ever placed in your hands for delivery?

A. I did make an arrangement for sale of said bonds, but when I called for them to deliver they were not forthcoming, and were never delivered to me; but they were in the mean time and without my knowledge placed in the hands of S. W. Hopkins & Co., of New York City. Hopkins & Co. have a branch of their house also in London.

Q. 5. During the time you were negotiating said bonds, were there, or not, any questions raised about their validity?

and if yea, state what it was, and from what source said report came.

A. When the bonds were first brought to my attention by said Littlefield they were represented as the regular bonds of the State of Florida, issued by authority of law, but it was but a short time before charges of fraud and illegality were circulated about their issue, and it was very difficult to introduce them into the market.

Q. 6. Do you know what became of the said bonds; were they ever sold within your knowledge; and if yea, at what price?

A. They were, I believe, offered in the London market by John Collinson, where they also failed to be accepted, but were subsequently placed on the Amsterdam market at reduced prices; they were eight per cent. bonds, payable in gold, and sold, I think (and so reported by the agents of S. W. Hopkins & Co.), by the company at fifty cents.

Q. 7. Did you, or not, subsequently at any time have occasion to visit Europe, in reference to your dealings concerning said bonds? and if yea, state when it was, and for what reason.

A. In order to protect my interest and secure the return of the money I had advanced the said company, as well as what was due me for my services, I was compelled to visit London in the summer of 1872.

Q. 8. While in London did you, or not, have any occasion to have any further dealings with or without said bonds? and if yea, please state to the best of your knowledge what was their general standing in the market as security.

A. I did have occasion, and was compelled to deal with some of said bonds while in Europe; I found their standing in the market was very bad, because of a general impression that they were not legally issued and would not be paid by the State of Florida; this impression and current opinion I perceived was founded on the same reports of fraud and illegality which had assailed them in New York, and that, in order to meet these reports, a portion of the bonds had to be used to pay the interest on the others before they were sold,

so as to hold them up in the market; these charges of fraud and illegality emanated from statements written and published by parties in the railroad interest in the State of Florida, also by some of the officials, that no provision for payment would be made of interest; these rumors and reports were very numerous.

Q. 9. State who at that time had the control of the negotiation of said bonds in London and Amsterdam, as far as you know.

A. In London they were controlled by S. W. Hopkins & Co. and John Collinson. In Amsterdam, as I was informed, by one Boissievain and others.

Q. 10. Do you know, or can you state, any other matter or thing of interest to either party material to this your examination, besides what you have been interrogated upon? and if yea, state the same fully and at large in your answer.

A. I do not.

L. P. BAYNE.

Subscribed and sworn to before me, this first day of November, 1878.

JAMES M. BALL and
R. E. STILWELL,
Special Examiners.

TESTIMONY OF THOMAS E. WILLSON.

(*Schutte Record, pages 680–683.*)

THURSDAY, January 30th, 1879.

Counsel for the complainant present as before.

THOMAS E. WILLSON, called as a witness on the part of the complainant, being duly sworn, deposes and says:—

Q. 1. State your name, age, residence, and occupation.

A. My name is Thomas Edgar Willson, my age thirty-four years; my residence 129 West Sixty-first street; my occupation is journalist, and my present occupation is day editor of the *World*.

Q. 2. Within your knowledge, as connected with the *World* newspaper, published in the city of New York, was there or was there not a communication published with reference to the issue of bonds by the State of Florida, in exchange for any railroad bonds; and, if yea, have you under your control the said article, or a copy thereof, as printed in said journal, and will you produce the same as part of your answer?

A. There was such an article published in the *World* newspaper, dated Florida, June 10th, 1870, and published in the *World* June 15th, 1870, the original files containing which I now produce for the examination of the examiners taking the testimony, but as the same belong to the files of the office I cannot part with the same, but produce a copy of the same compared by myself very carefully, and which I make part of my answer, and the same is marked "Exhibit A."

Q. 3. Did or did not the editor of the *World* receive any further communication from the State of Florida in reference to said bond issue, and the character thereof?

A. A further communication was received, dated Tallahassee, June 13th, 1870, which was referred to in an editorial in the *World*, in which its substance was stated, warning capitalists against purchasing the bonds referred to as fraudulent.

Q. 4. Besides publishing the communication you have mentioned, was its character and contents commented upon editorially in the *World*, and if so, will you produce the same, or a copy thereof, as a part of your answer?

A. It was noticed editorially in the *World*, and I produce a copy thereof, marked "Exhibit B," and which I make a part of my answer.

Q. 5. Has or has not the New York *World*, as a public journal, a circulation in Europe; and, if so, to what extent, and had it such circulation in 1870?

A. It has, and in 1870 it had a large circulation, we having an office in London at the time, where it was sold and from which all our European subscribers and correspondents were supplied.

Q. 6. About the time of said publication, to wit, June, 1870, and subsequent thereto, did you or did you not hear of other

similar publications being made, touching the validity of the said Florida State bonds described in said publication of June 15th, 1870?

A. I did; the article created a good deal of discussion, and was copied in a number of papers through the country, and was referred to by others, and became a subject of general notoriety.

Q. 7. Do you know or can you state any other matter or thing of interest to parties complainants or defendants besides what you have answered unto; and if yea, please state the same at large in your answer.

A. I know of nothing.

T. E. WILLSON.

Subscribed and sworn to before us, this thirtieth day of January, 1879.

R. E. STILWELL and
JAMES M. BALL,
Examiners.

EXHIBIT A.—R. E. Stilwell, James M. Ball, Examiners.

(From *The World* of Wednesday 15th, 1870.)

FLORIDA RAILROAD BONDS.

To the editor of the World:

SIR:—The Governor of Florida is reported to have issued, within the last few days, State bonds amounting to about four millions of dollars to the Jacksonville, Pensacola and Mobile Railroad Company, of which M. S. Littlefield (not altogether unknown either in Massachusetts, New York City, or North Carolina) is president. Under their act of incorporation, the same company may hereafter claim a further issue of about three millions, making seven millions in all. Other companies already chartered have the privilege under bills, which have become laws, to claim an issue of not less (probably more) than five millions, making a State railroad bond debt of twelve millions of dollars.

Florida, be it remembered, has a population scarcely sufficient to give her one representative in Congress, and the taxable property constitutes, probably, the poorest Congressional district in the Union.

As the bonds first above mentioned have already been issued, and are on their way to New York, and some of them to Europe (it is said), for negotiation, it is well, perhaps, that capitalists should be put on their guard.

There is not probably an intelligent person in Florida who doubts but that the people of the State, whenever called upon to pay, will repudiate the whole of the indebtedness.

They will deem this not only a necessity, because of their power, but as a right and a duty. To admit the validity of the debt would be to give sanction to a violation of their State Constitution, and inducement to corrupt executive and legislative action.

The clauses of the State Constitution relating to this matter are the following:—

"No tax shall be levied upon persons for the benefit of any chartered company of the State, or for paying the interest on any bonds issued by said chartered companies."

"The legislature shall have power to provide for issuing State bonds bearing interest for securing the debt of the State and for the erection of State buildings, support of State institutions, and perfecting public works."

Under the concluding words of the second of the foregoing clauses the doubtful right was claimed for the legislature of authorizing the issue of these bonds.

If, as held by the Supreme Court of Michigan, in the late cases reported in the New York *World*, the Jacksonville, Pensacola and Mobile Railroad Company (of whose stock the State owns not one dollar), is a private enterprise, and not a public work, the words quoted give no authority for the grant of these bonds. I quote from the report of the *World*: "Taxation, said the court, in effect, is the taking of the people's money under the implied condition of using it for the people's good. Where it is not imposed for public, but for private purposes, then it ceases to be taxation and becomes

plunder. Such being the case, the question arises whether railroads are public objects, and the answer to this is, no. They are private property, whose owners make it their business to transport persons and merchandise in their own carriages over their own land for such pecuniary consideration as may be stipulated. True, as they accommodate a public want they seem to possess a public character, but that character is in nowise different from that attaching to a hotel, a line of stages, or a grist-mill—all of which are public because they serve the public, but in the eye of the law mere private enterprises begun and carried on for private gain."

It would seem that some capitalists, whether in New York, London, or Frankfort, before determining to sink their money in Littlefield's bonds, would do well to consider the words of the Florida Constitution in connection with the Michigan decision.

But, as intimated above, leaving out the question of constitutional power, these bonds are in Florida confidently believed to be the result of corrupt executive and legislative action. A letter from George W. Swepson of North Carolina, a confederate of Littlefield, sent by Littlefield's hands to Governor Reed, has come to light, from which the following are extracts:—

"I regret my inability to be in your city during the extra session of the legislature. General Littlefield has the bills, &c., and will fully explain everything to you. You will remember when in New York, our agreement was this: You were to call the legislature together, and use your influence to have our bills passed as drawn by us, and if you were successful in this, you were to be paid $12,500 in cash," &c.

The legislature was accordingly convened in extra session only about three months after its regular session, and did not pass the railroad bill required of them. But the majority not then being thoroughly corrupted, a clause was inserted in the act authorizing the issue of the bonds after a severe struggle requiring the railroad company to give to the State mortgage security for its protection. This clause, though notoriously adopted by both branches of the legislature, was found

to have mysteriously disappeared from the act, as signed by the Governor, among the rolls of the Secretary of State. A bill in chancery was, therefore, filed to enjoin the issue of the bonds, on the ground that the act authorizing their issue had been fraudulently changed by Littlefield and his associates, or by their procurement and for their benefit. The injunction was granted by the court, and no motion was ever made by the parties to have it dissolved. At the next session of the legislature, held in January last, the operations of the railroad ring thus arrested by the court were renewed at the capital, and a bill was actually prepared by these shameless parties, introduced and passed, whereby validity was given to the law pronounced void by the court for fraudulent alteration of it, with authorization for the issue of bonds in immensely augmented quantities. It is not necessary to say by what method this was brought about. The bill, on its passage, was characterized well and aptly by Mr. Walker, a Republican member, as a bill to legalize fraud, and pay a premium to rascality.

And it is under this bill, claiming to be a law, that the four millions of Florida State bonds now on their way to Northern and European markets for negotiation have been issued.

FLORIDA, June 10th, 1870.

EXHIBIT B.—R. E. Stilwell, James M. Ball, Examiners.

(Editorial from *The World*, June 15th, 1870.)

THE FLORIDA BONDS SWINDLE.

We have received a telegram dated Tallahassee, June 13th, and signed by five respectable names, warning capitalists against purchasing the Florida State bonds which have just been issued for railroad purposes. We have also received a letter from a member of the legal profession in Florida, dated June 10th, stating the amount of these bonds, exposing their fraudulent character, and narrating the methods by which this corrupt swindle was perpetrated. This letter will be found in another column. We commend it to the perusal of capitalists

to whom the bonds may be offered, and also to the attention of citizens who desire information respecting the working of the reconstructed government of that State.

TESTIMONY OF SAMUEL M. CHAPMAN.

(*Schutte Record, pages 683–687.*)

MONDAY, February 10th, 1879.

Present—Counsel for complainant as before.

SAMUEL M. CHAPMAN, a witness on the part of the complainant, being duly sworn, deposes and says:—

Q. 1. What is your name, age, and residence?

A. Name, Samuel M. Chapman; age, thirty-eight years; I reside in the city of New York.

Q. 2. What was your occupation and business connection in the years 1870, 1871, 1872, and 1873?

A. I was connected with the firm of Sidney W. Hopkins & Co.

Q. 3. What business was your firm engaged in, and where?

A. They were engaged in importing and supplying iron to railroads, and negotiating securities in New York, and London, England.

Q. 4. Do you or not know a body corporate and politic styled the "Jacksonville, Pensacola and Mobile Railroad Company"? And if yea, state when and how you acquired the knowledge.

A. I do know said company. I became acquainted with it in the early part of the year 1870, at which time the firm with which I was then connected entered into an agreement to sell a large amount of bonds for said company.

Q. 5. What kind of bonds, and to what amount?

A. Bonds issued by the State of Florida to said company; the amount offered was four thousand bonds of the par value of $1000 each.

Q. 6. Did or did not said firm sell said bonds in whole or in part, and what amount, if any?

A. They did sell a portion of said bonds, to wit, twenty-eight hundred, numbered from one to twenty-eight hundred, both inclusive.

Q. 7. Did they or not sell more than twenty-eight hundred of said bonds?

A. They did not sell more than twenty-eight hundred.

Q. 8. At what price, if any special price was agreed upon, did said firm of Hopkins & Co. agree to account to said company for said bonds?

A. The price which Hopkins & Co. agreed to pay and did pay for the bonds was, I think, £100 sterling for each bond of $1000, or about fifty cents on the dollar.

Q. 9. What, if anything, within your knowledge, caused said bonds to be sold at such a reduced price, as, say, of about $500 for each $1000 bond, and when and in what manner were said purchases and sales made? Please state fully the facts as they occurred.

A. When the said bonds were first brought to the firm for sale, they expected to get a good market price for them, as they were eight per cent. gold bonds of a State, but before any of them were placed upon the market, the newspapers of the State of Florida and of the city of New York charged that the issue of said bonds was fraudulent, illegal, and void. In consequence of these publications, and the fact that it was charged that the law authorizing the issue of said bonds was unconstitutional and void, it was not in their power to put them on the market at the price they originally expected. There were verbal reports of the illegal and fraudulent character of the bonds in circulation before the publications I have mentioned, and these rumors were afloat as early as June, in the year 1870, but before this time the firm had given credit on the faith of the bonds, and they were forced to sell them at some price to protect themselves. The attention of M. S. Littlefield, the president of said company, was called to these rumors and publications, and requested that they be allowed to take the bonds to account at a reduced price of fifty per cent. or less, so as to be able to hold out special inducements for parties to buy them, as the only way to make a

sale of them at all. Their proposition to said Littlefield was acceded to by him for the company, and the bonds were taken to account at £100 per bond, and afterwards disposed of through John Collinson, in London, at or about £138. 10s. 1d. per bond.

Q. 10. About what time did your firm make the offer to take said bonds at fifty per cent. or less, and at what time were your propositions agreed to, if at all? And if the proposition or acceptance, or either of them, was in writing, please produce such writing and make the same a part of your answer to this interrogatory.

A. Letters were addressed to M. S. Littlefield, as president of said company, under dates of June 16th and 17th, 1870, which I will produce and make part of my answer to this interrogatory. His acceptance was subsequent and made in London, November 14th, 1870, which I also produce as part of this answer; and also the acceptance of said firm under date of November 28th, 1870, which I also make a part of this answer. (Marked, respectively, "Exhibits C, D, E, and F.")

Q. 11. Who, if any one, to your knowledge or information, besides your firm and said John Collinson, were interested in the sale and purchase of said bonds at the reduced prices you have named?

A. Certain parties in Amsterdam, Holland.

Q. 12. Please give the dates of the first and last sale of said bonds, if you can.

A. The first real sale of said bonds was made on or about the nineteenth day of November, 1870, and the last on or about July 31st, 1871.

Q. 13. Was or was not any portion of the gross proceeds of the sales of said bonds deducted therefrom; and if yea, what amount and for what purpose?

A. A sum amounting to nearly $400,000 was deducted from the gross amount of said proceeds, and used for the purpose of paying interest on the bonds so sold and floating them on the market.

Q. 14. Do you know or can you state any other or further matter or thing material or of interest to the parties plaintiff

or defendant herein further than you have stated? And if yea, please state the same fully and at large, as if specifically thereunto interrogated.

A. Nothing further occurs to my mind.

S. M. CHAPMAN.

Subscribed and sworn to before me, this tenth day of February, A. D. 1879.

JAMES M. BALL,
R. E. STILWELL,
Examiners.

Adjourned to Tuesday, February 11th, 1879, at 11 A. M.

EXHIBIT C.—James M. Ball and R. E. Stilwell, Examiners.

(S. W. Hopkins & Co., 71 Broadway, New York; 58 Old Broad street, London.)

NEW YORK, June 16th, 1870.

M. S. Littlefield, Esq., President, Washington, D. C.,

DEAR SIR:—Your favors of 14th and 15th inst. are received, and we carefully note contents.

In reference to the article on "Florida bonds," we observe that you authorize us to do anything which we may find necesary. We do not know what can be done, or whether anything can be done, but on the arrival of Colonel Houston here tomorrow, we purpose having him and Colonel Holland call at the *World* office and see what can be accomplished in the way of fixing that paper. Yours very truly,

S. W. HOPKINS & CO.

ELLIS.

Endorsed:

Letter S. W. Hopkins & Co., New York, June 16th, 1870. Propose to send Col. Houston and Col. Holland to *World* office to fix that paper concerning Florida bonds.

EXHIBIT D.—James M. Ball and R. E. Stilwell, Examiners.

(S. W. Hopkins & Co., 71 Broadway, New York; 58 Old Broad street, London.)

NEW YORK, June 17th, 1870.

M. S. Littlefield, Esq., President, Washington, D. C.,

DEAR SIR:—In consequence of the articles which recently appeared in the *World*, as also of the notice in to-day's papers of application for an injunction to prevent sale or negotiation of the $4,000,000 issue of Florida bonds, the success of our negotiations has (as you will readily understand) become so much endangered, that it seems absolutely necessary to act on the other side at once before the articles in question shall be copied there, accompanied by the unfavorable comments which it is almost certain will be elicited. And thus it may, at any moment, become necessary for us to cable our Mr. F. H. Collins (who is now abroad, and engaged in the negotiation), instructing him to close at such price as he may at the time be able to command; and on this account we have to request that you will at once forward to us authority to place the bonds (if we should find it necessary to do so) at a minimum of forty instead of sixty, as at present authorized.

In view of the onslaughts which have already been made, and of those which will be almost certain to follow, we think it vitally important that we receive such authorization, and at the earliest practicable moment. Please give us your views in brief by telegraph on receipt of this.

Also please inform us whether the Supreme Court of Florida has ever rendered any decision bearing on the constitutionality of the act of legislature which authorizes the present $4,000,000 issue, and if such decision has been made, please advise us fully in reference to it, and also send us a copy duly attested, at once, as it will be of the greatest importance to us.

Enclosed we hand you copies of our correspondence with Mr. D. J. Pruyn, which will explain itself.

Yours very truly,

S. W. HOPKINS & CO.

ELLIS.

Endorsed:

Letter:—New York, June 17th, 1870.—S. W. Hopkins & Co. In consequence of the article in the *World*, and the threatened injunction in Florida, ask permission to sell in Europe at a minimum price of 40, if necessary, before publication in Europe; asks for copy of decision of Supreme Court, if any, on the $4,000,000; encloses correspondence with D. J. Pruyn.

EXHIBIT E.—James M. Ball and R. E. Stilwell, Examiners.

58 OLD BROAD STREET, LONDON.
NOVEMBER 14th, 1870.

Messrs. S. W. Hopkins & Co., London,

GENTLEMEN:—I herewith offer you four thousand (4000) Florida State eight per cent. gold bonds, in aid of the Jacksonville, Pensacola and Mobile Railroad Company for one thousand dollars ($1000) gold each, at the price of one hundred pounds sterling (£100) for each bond, in the city of London, subject to the commission agreed as per contract, dated thirteenth day of April, 1879, with your good selves. I remain, gentlemen,

Yours faithfully,

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

JACKSONVILLE, P. M. & R. R. Co.

EXHIBIT F.—James M. Ball and R. E. Stilwell, Examiners.

NOVEMBER 28th, 1870.

Milton S. Littlefield, Esq., President J. P. & M. R. R. Co.,

SIR:—In reference to your favor dated November 14th, 1870, offering four thousand Florida State eight per cent.

gold bonds for one thousand dollars gold each in aid Jacksonville, Pensacola and Mobile Railroad Company, we do hereby accept the said offer at the price named, viz., one hundred pounds for each bond, with any accrued interest added in your favor, of one thousand gold each net, in the city of London.

We remain, sir, your obedient servants,

(Signed) S. W. HOPKINS & CO.

TESTIMONY OF C. L. CHASE.

(*Schutte Record, pages 706–707.*)

TUESDAY, April 15th, 1879, 11 A. M.

Present—Joseph B. Stewart, counsel for complainant.

CONVERSE L. CHASE, being recalled by complainants' counsel, after being duly sworn says:—

Q. 62. In your previous examinations you spoke of being authorized, as trustee for the Jacksonville, Pensacola and Mobile Railroad Company, to negotiate certain bonds of the State of Florida issued to said company and certain bonds of said company when you visited Europe in 1872; did you or did you not attempt to make such negotiations?

A. I did.

Q. 63. What was the result of your effort to negotiate said bonds?

A. I found that the Florida State bonds had no market value, consequently could not dispose of any of them excepting through the agency in London of the Holland syndicate.

Q. 64. What, to the best of your recollection and knowledge, did you find to be the reason of obstruction, if any, to the finding of a market for said Florida State bonds?

A. The first reason was the bad reputation of the bonds questioning their legality, and second, the said Holland syndicate and London agency had it so arranged that no Florida State bonds or Florida railroad bonds could be put on the market at all without having the stamp of the syndicate on

the bonds; consequently I was obliged to resort to the contract, such as was made, marked "Exhibit C, No. 19," referred to in my previous examination.

Q. 65. Do you know of any other matter or thing material to the issues in this cause and to the parties thereto, beyond what you have been questioned as to? If yea, please state the same now fully as if specifically interrogated thereunto.

A. Nothing further to my recollection.

C. L. CHASE.

LETTER CHASE TO LITTLEFIELD.

(*Schutte Record, page 715.*)

EXHIBIT C, No. 5.

11 OLD BROAD STREET, E. C.
LONDON, August 13th, 1872.

Gen. M. S. Littlefield, Jacksonville, Fla.,

DEAR SIR:—My delays are caused by an injunction of Codington which, as yet, I have been unable to remove. Can't do anything with new matters until old matters are out of the way; and Coddington will not let loose until he is secured both for himself and Gambol, both claims amounting to $40,000. If I can get that arranged, the cost is clear, and I shall stick to until I effect the matter, if it takes all summer. One other matter; J. Cook, McCullough & Co. has been receiving some bad reports from some one unknown to me, and they decline to act. When I find some one else that will act, you must make the appointment on a telegram from me. I have tried every firm in London, and they will not act. So you see we are in bad odor over here. I am now trying to get some one to act in New York. We can't bring out a new loan with a first-class firm as fiscal agents. We have agreed upon the $20,000 per mile, at six per cent., and bonds contracted at sixty-five per cent. gold, which will give us at present rates 748 per bond of $1000 each; that will give $14,950 per mile net in currency.

I shall work this out, but you must be patient, for it takes time; these English are awful slow. I can't see now why the matter can't be a success unless you do some awful thing down in Florida that will knock us all up. Please keep secret what I write you; I have heard from every word I have written you thus far. Secrecy is the best road to success.

I do not know as you can read this awful scratching. But you can play the Yankee; look and guess. If you write me, direct to Langham Hotel, London.

Respectfully,

C. L. CHASE.

P. S.—I have met the Holland syndicate, and they are ready to act as soon as I can get ready. Where is Smith and Gardner? I have not heard from them since I left New York. I would write Smith if I knew where he was.

TESTIMONY OF M. S. LITTLEFIELD.

(*Schutte Record, page 740.*)

Q. 67. You have stated that you contracted to dispose of said bonds for Florida State bonds at the price of o .ly £100 sterling for each £1000 bond; do you, or do you not know? And if yea, please state what reason, if any, caused you to contract to sell said bonds at such reduced price; please state in detail the facts as they occurred within your knowledge.

A. I do know the reason; they were many, but principally because of the damaging statement in relation to the issue of said bonds which appeared in the public press of the State of Florida, in the city of New York, and other places, which papers were sent to London, England, Amsterdam, Holland, Frankfort, Germany, thus rendering it impossible to sell the bonds in open market at any price whatever. The only way they could be converted into money was by placing them in the hands and under the control of a syndicate formed for the purpose of floating securities, and then we had to accept just such terms as they proposed; before I accepted the proposi-

tion I tried to dispose of the bonds in open market; and a private negotiation in London, England, in Brussels, in Berlin, in Frankfort, and Vienna in person, and through correspondence in Paris and in Holland; the damaging reports in relation to the said Florida State bonds had preceded me at every place I went, and finally I was compelled to accept the reduced offer from the necessities of the company at home; the company was extending its road westward from Quincy, and was greatly in need of money to pay for material and iron, and to pay employés upon, of which there was a large number of men clamoring for their pay.

TESTIMONY OF THOMAS B. CODDINGTON.

(*Schutte Record, pages 783 to 791.*)

And on this nineteenth day of January, 1878, the complainant produces THOMAS B. CODDINGTON, a witness in its behalf, who being duly sworn, deposes and says:—

Q. 1. Please state your name, age, residence, and occupation.

A. Thomas B. Coddington, sixty-three years; city of New York, merchant.

Q. 2. Have you or have you not any knowledge of the issue and exchange of any bonds of the State of Florida for bonds of the Florida Central Railroad Company?

A. Yes, sir; I have.

Q. 3. Are you or are you not a defendant in a suit in equity now pending in the Circuit Court of the United States for the Northern District of Florida, involving the bonds referred to in your preceding answer, or a portion of them?

A. Yes, sir; I am a defendant in that suit.

Q. 4. Did you or did you not file your answer to said bill in said court, sworn to, on or about the eighteenth day of October, 1877?

A. Yes, sir; I did.

Q. 5. In that answer did you or did you not among other things state what connection you had with the exchange of a

thousand papers, called bonds, of the Florida Central Railroad Company for a corresponding number of bonds of the State of Florida?

A. Yes, sir.

Q. 6. Will you now please look at the printed copy of your answer, now shown you, and state whether, to the best of your knowledge and belief, the same is a true and correct copy?

A. I have looked at the copy, and believe it to be a correct copy.

Q. 7. In that answer, under paragraphs XI. and XII., and pages 11 to 17 inclusive, you state and set forth the following facts and exhibits: This defendant says that on the twelfth day of January, A. D. 1871, he gave Edward Houston the written instrument marked "Schedule F;" that, although by the said instrument it appears that Houston delivered and that this defendant received one thousand Florida Central Railroad Company First Mortgage Bonds, payable to the State of Florida, for $1000 each, yet this defendant alleges and says that the following are the actual facts:

That on the eleventh day of January Houston, taking a servant with him, and accompanied by this defendant, went to the office of Colonel Robert H. Gamble, and received from Gamble the one thousand railroad bonds described in Schedule F.

That thereupon Houston and this defendant, and Houston's servant carrying the bonds, went immediately to the Governor's office in the Capitol, and the said one thousand railroad bonds were then and there given to Harrison Reed, Governor of Florida, in the said executive chamber, and the said Governor Reed then delivered therefor one thousand State of Florida bonds, of the face value of $1000 each, and numbered from 3001 to 4000 inclusive, which said bonds this defendant understood were issued under the statutes of 1869 and 1870, described in complainant's bill.

That Houston directed his servant to take the package of State bonds and carry them to this defendant's room in the hotel; that Houston and this defendant, together with the said servant then carrying the bonds, went to the hotel, where the State bonds were by Houston left with this defendant.

That this defendant, the next morning at Houston's request, delivered to Houston the paper marked "Schedule F," and the said Littlefield, as president of the said Jacksonville, Pensacola and Mobile Railroad Company, gave his full authority and assent thereto, and assigned the same in his official capacity.

And this defendant says that in the manner aforesaid he did receive the said one thousand State of Florida bonds, numbered 3001 to 4000, and that the same were received by the authority, assent, and approval of the said president of the said Jacksonville, Pensacola and Mobile Railroad Company, and in trust and for account of said Edward Houston.

And this defendant says that the disposition he was to make of the said bonds and their proceeds, if any were received by him, is set out in said Schedule F.

That the Governor told this defendant, in Houston's presence, in the executive chamber, at the time of the delivery of the said State bonds for this defendant, not to take the bonds out of the State until the Governor had made arrangements for the payment of certain moneys to the State of Florida with the said President Littlefield.

That, in accordance with this direction of the Governor as aforesaid, this defendant remained with the bonds in Tallahassee until he received the following written instructions which are in the words and figures following, to wit:—

President's Office, Jacksonville, Pensacola and Mobile Railroad Company.

TALLAHASSEE, FLA., January 12th, 1871.

T. B. Coddington, Esq., Tallahassee, Fla.,

My DEAR SIR:—I have the honor to give you the following instructions in relation to the bonds, or the proceeds thereof which you have received from the Governor in exchange for railroad bonds:—

1. The bonds will be delivered to the parties in London, England, who have purchased the four thousand bonds issued in aid of the Jacksonville, Pensacola and Mobile Railroad, and collect the pay therefor.

2. You will pay the following named parties, viz.: Edward Houston, one hundred and sixty-three thousand dollars ($163,000), M. D. Papy, $16,000, George Westcott, $5000, Gamble, $15,000, Colonel J. P. Sanderson, $57,000. I state the amounts not exactly, but about the sums, as you have them exact, upon each party delivering to me or to my order all stocks, bonds, coupons, notes, drafts, acceptances, or whatever the said is to pay for; but should any of the said parties whose names are mentioned above refuse to receive the said amounts after it had been offered to them, and after Colonel Houston has been paid, then the said amounts shall be paid to me or to my order.

3. The balance of the money will be placed to the order of his Excellency Harrison Reed, Governor of Florida, to pay indebtedness to the State.

Truly yours,

M. S. LITTLEFIELD,
Pres. J. P. & M. R. R. Company.

P. S.—This letter is so far modified as to conform to the letter or receipt given by me to Edward Houston, and approved by me.

M. S. LITTLEFIELD,
Pres. J. P. & M. R. R. Co.

T. B. Coddington, Esq.,

You will please place to my credit in the National Trust Company of New York City, the amount called for in the above arrangement, either by wire or letter, and oblige

HARRISON REED,
Governor of Florida.

And this defendant having received the above instructions from the said President Littlefield, and the Governor of Florida being fully advised thereof, and assenting thereto, this defendant having first, personally, bade good-bye to all the parties, was making his arrangements to return to New York by the railroad from Tallahassee, and so informed the president of the road; thereupon, President Littlefield directed

this defendant to go by the way of Thomasville and Charleston; and the said Littlefield informed this defendant that he (President Littlefield) had provided a carriage, and that for the safety of the bonds, he, Littlefield, would send him by his carriage (accompanied by his secretary) to Thomasville, Georgia, where this defendant could take the rail, and that his secretary, for safety to the bonds, would accompany this defendant as far as Charleston. That, as directed by the said Littlefield, this defendant went in the said carriage to Thomasville, and thence by rail to New York; and that the secretary of the said Littlefield did accompany this defendant as far as Charleston from Tallahassee.

And that after the arrival of this defendant in New York, he proceeded by the first steamer to Europe, and reached the city of London with the bonds as speedily as practicable and without delay.

That this defendant, having thus received the said State bonds on the eleventh day of January, A. D. 1871, retained and kept them in London, England, until the eighteenth day of April, A. D. 1871, because he could not get the money for them, when this defendant, having been peremptorily ordered by the said Edward Houston, did, on said eighteenth day of April, A. D. 1871, deliver the said one thousand State bonds numbered 3001 to 4000, inclusive, to S. W. Hopkins & Co., London, England.

And this defendant says that, as aforesaid, he received said one thousand bonds numbered 3001 to 4000, on the 11th of January, A. D. 1871, and delivered them as ordered on the eighteenth day of April, A. D. 1871, in London, to S. W. Hopkins & Co. And this defendant says the orders and directions to him to deliver the said one thousand bonds are as follows:—

That he received in London the following message by cable from Edward Houston:—

Atlantic Cable Message, Station from Savannah.
From E. Houston to Coddington, care Hopkins, London.
Deliver bonds to Hopkins. Everybody protected.

And this defendant also received the following from Edward Houston:—

SAVANNAH, GA., April 11th, 1871.

T. B. Coddington, Esq., London,

DEAR SIR:—I hereby authorize and request you to deliver to Messrs. S. W. Hopkins & Co., of London, the one thousand Florida State bonds, of one thousand dollars each, received by you from the State of Florida in exchange for a like number and amount of the bonds of the Florida Central Railroad Company, the same having been delivered to you by me to be held in trust as per your receipt, dated January 11th, 1871, which I now surrender herewith, I having no further lien on or against either of the above-mentioned bonds.

Yours respectfully,

E. HOUSTON.

Also the following:—

TALLAHASSEE, FLA., April 6th, 1871.

SIR:—I hereby recall my letter of instructions to you, dated January 12th, 1871, and also all instructions subsequently given; and now instruct you to deliver to Messrs. S. W. Hopkins & Co., of 58 Old Broad Street, London, the one thousand bonds of one thousand dollars each, to wit: One million dollars of the State of Florida issued to the Jacksonville, Pensacola and Mobile Railroad Company, now held by you as trustee, whenever Edward Houston, Esq., shall authorize and direct you so to do; imposing upon you the single duty of procuring from Messrs. S. W. Hopkins & Co. their signature to the written agreement entered into with you, which is intended to fix upon them the responsibility of carrying out my original orders, and relieving you therefrom.

M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

To T. B. CODDINGTON, ESQ.

And on the face of this instrument and across the writing was the following:—

I hereby approve of and ratify this order.

HARRISON REED,
Governor of Florida.

I do hereby authorize and request T. B. Coddington, Esq., to deliver the within mentioned bonds to S. W. Hopkins & Co., of London, as I have no further lien against them.

E. HOUSTON.

Which was communicated to me by my firm in New York, prior to the cable from Houston ordering me to deliver the bonds.

This defendant further says, that the said S. W. Hopkins & Co. had also a house in New York as well as in the city of London, and were the same firm and composed of the said parties; and that the said S. W. Hopkins & Co. were then the fiscal agents of the State of Florida and of the said Jacksonville, Pensacola and Mobile Railroad Company; and that as aforesaid this defendant, as thus directed, did deliver said one thousand bonds numbered 3,001 to 4,000 inclusive to said S. W. Hopkins & Co. in London, and obtained their signature as in said instructions directed; that having delivered the said bonds on the 18th of April, as directed by cable from Houston, that afterwards the said S. W. Hopkins & Co. sent a message by cable to their New York house, notifying them of the receipt of the bonds, and thereupon the New York house of S. W. Hopkins & Co. sent the following letter to the partner of this defendant, and also sent Mr. Nichols the original receipt (Schedule F of complainant's bill) which this defendant had given to Houston as aforesaid, dated April 11th, to deliver the bonds, all of which the defendant was advised of by said partner as aforesaid.

That acknowledgment and letter is as follows:—

S. W. HOPKINS & Co.,
71 Broadway, near Wall street,
NEW YORK, April 19th, 1871.

George L. Nichols, Esq,

DEAR SIR:—A cablegram received this morning from our London house announces that Mr. Coddington has delivered the bonds. Enclosed please find Mr. Coddington's original receipt to Mr. Houston, dated Tallahassee, January 11th, 1871. Also Col. Houston's authority for the delivery. Please acknowledge receipt of these documents. We should be glad to know if you have anything from Mr. Coddington confirming our dispatch.

Yours very truly,

S. W. HOPKINS & CO.
Per L. L. SPRING.

Q. 7. Will you please state whether or not said statement and exhibit contain a true history of the transaction which attended the receipt, transfer, and delivery of said bonds by you?

A. The statement, so made in my answer, is entirely correct.

Q. 8. It appears from your answer that you received said bonds, and that such transaction occurred on or about the eleventh or twelfth day of January, 1871. Will you please state whether such is, or is not, the correct date of the transaction referred to?

A. The dates are correctly stated therein.

Q. 9. Besides the matter stated in your answer, or a portion thereof, before set forth, will you please state any other or further matter or fact connected with the receipt and handling of said bonds not set forth therein?

A. I took the obligation or undertaking of S. W. Hopkins & Co. as directed by Littlefield and approved by the Governor of Florida and Houston, set forth in the interrogatory No. 7 preceding.

Q. 10. Will you state the numbers of the bonds of the State of Florida you so received and delivered in the manner you have before stated?

A. Three thousand and one to four thousand, both inclusive.

Q. 11. At the time you received an exchange and delivered said bonds, were there or not one or more suits pending, enjoining the receipt or delivery of the same? And if yea, please state by whom said suits were being prosecuted.

A. There was such suit or there were such suits pending by Judge Westcott and Colonel Gamble, and injunctions were pending at that time. Colonel Gamble and Judge Westcott consented that I should take the bonds, and I supposed the suits were dismissed, but learned subsequently they were not.

Adjourned until Monday, January 21st, 1878, at 11 o'clock A. M.

MONDAY, January 21st, 1878.

Present—Counsel as before.

Witness THOMAS B. CODDINGTON continued:—

Q. 12. Please state what transpired or was said by the parties, to wit, Edward Houston, R. H. Gamble, Comptroller, Harrison Reed, Governor of the State of Florida, in reference to said Florida Central Railroad bonds and the bonds of the State of Florida numbered above 3001 at or about the time said bonds were exchanged and the said State bonds delivered to you, besides what you have before set forth, or either of them, separately or together.

A. Houston informed me that the State bonds which he had had, had been returned to the Governor, and the railroad bonds deposited with Gamble, who was Comptroller, for safe keeping, and that the Governor promised to exchange them back. The Governor hesitated about sending them back until some arrangement was made whereby the residue of the money over and above the special liens should be at the disposal of the State of Florida, which arrangement was made

subsequently. Mr. Gamble said in the presence of Houston that he objected to let the bonds go, as it would impair the value of the stock which he (Gamble) held, and which parties had agreed to buy and pay for which had not been paid for, and hence he had taken measures to stop the bonds going. The Governor said he was quite willing to exchange the bonds, if he could be satisfied that the money, after paying these liens upon them, would come back to the State and be applied for the purpose for which they were intended.

Q. 13. Was or was not the object of the suits and injunctions you have spoken of on the part of Gamble and Judge Westcott the subject of conversation between Governor Reed and yourself, and the other parties, at any time when present?

A. I do not think I talked with Governor Reed about the suits of the other parties.

Q. 14. It appears, then, from your answer previously given, that the proceeds of said bonds numbered above three thousand were to be disposed of exclusively in the manner stated in the papers dated January 11th and 12th, 1871. That is, after paying the private liens specified therein; the balance, which was to be placed to the credit of the State of Florida, in the National Trust Company in the city of New York. Is that what you mean to say?

A. Yes; and I fnrnish you the papers, copies of the originals, which will speak for themselves. The paper signed the 11th of January, 1871, I now produce, and a copy of it; it is as follows:—

TALLAHASSEE, FLA., January 11th, 1871.

Received from Edward Houston, Esq., in trust and for his account one thonsand Florida Central Railroad Co. First mortgage bonds, payable to the State of Florida, for one thousand dollars each, with which I hereby undertake to arrange with General M. S. Littlefield and other parties interested, and collect from him or them the amount which it is admitted is due to said Houston, viz.: $163,026.71 with interest thereon at seven per cent. from the time M. S. Littlefield's draft on S. W. Hopkins & Co. for said amount fell due, and

in addition thereto the sum of $5000 for costs and expenses incurred by said Houston, in suits brought by parties against said Houston in relation to these bonds, or other bonds, and the stock of the Florida Railroad Company, it being understood that all proceedings at law, or otherwise, are to be discontinued, or if that be impossible, he is to be indemnified by responsible parties against all damages or costs arising out of said proceedings, it being further understood, that said Houston shall, when paid, transfer and assign to said Littlefield all the stock in the Florida Central Railroad Company, or other securities which he holds or which were given him as collateral security to secure the above amounts due to said Houston.

And it is further understood and agreed, that said Coddington is to collect the further sums of money and pay to said Houston for account of the parties named below, which it is understood are a lien subsequent and inferior to said Houston's lien on these bonds, viz.:—

M. D. Papy, Esq., the sum of $16,000.

Col. R. H. Gamble, the sum of $15,000, who is to surrender to said Littlefield three hundred shares of stock in the Florida Central Railroad Company, and $1700 in bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company at par.

J. P. Sanderson, Esq., the sum of $57,560, and said J. P. Sanderson is to surrender the said Littlefield seventy shares of stock in the Florida Central Railroad Company, and comply with his agreements with said Littlefield, for which a part of said sum is in consideration.

J. H. Flagg, Esq., the sum of $4000, for which he is to surrender the Central Railroad Company's stock, and the Pensacola and Georgia Railroad bonds, which he holds, to said Littlefield.

And also to pay for seventy shares of stock, now or lately held by J. B. Westcott, Jr., Esq., the sum of $3845.33, when said stock is to be delivered to said Littlefield.

This arrangement is based on the assumption that the money will be paid from the proceeds of bonds negotiated by

S. W. Hopkins & Co. of New York; the remainder of said proceeds is to be disposed of as directed by the parties interested.

(Signed) T. B. CODDINGTON.

I approve and assent to the same.

(Signed) M. S. LITTLEFIELD,
Pres. J., P. & M. R. R. Co.

And the contents of the paper of January 12th, 1871, appears in my previous answer, and is shown in question No. 7. In the letter of April 6th, 1871, Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company, which letter was approved and ratified by Governor Reed of Florida, and authorized and requested by Houston, directed me to procure from S. W. Hopkins & Co. their obligation to carry out what I was originally directed to do in his letter of the 12th of January, 1871. This letter of April 6th appears in question 7, and in conformity thereto I took from S. W. Hopkins & Co., of London, a writing of which the following is a true copy, and the original of which is appended to copies of papers of the 11th of January, 1871, signed by me, and of the 12th of January, 1871, copies of which also appear in question No. 7.

M. S. Littlefield, Esq.,

We hereby agree to hold the net proceeds of the one thousand bonds of the State of Florida, for $1000 each, to be disposed of by us, subject to the performance of the instructions contained in the two documents, dated 11th and 12th of January, 1871, of which copies are hereto annexed, dated this eighteenth day of April, 1871.

S. W. HOPKINS & CO.

The word "net" inserted before signing.

LONDON, S. W. HOPKINS & Co.

I now present the originals of all these papers for inspection but retain them for my own protection, and I have now and

here compared the copies, as they above appear, with said originals now in my possession, and know said copies to be correct.

Q. 15. Did you not receive at any time any money derived from the proceeds of the bonds numbered above three thousand?

A. No, sir.

Q. 16. Did you know what became of the said State bonds numbered above three thousand which you say you received on the 12th of January, 1871, and took to London? State to the best of your knowledge as to the disposal of said bonds and their present condition?

A. I delivered the State bonds 3001 to 4000, to S. W. Hopkins & Co., of 58 Old Broad street, London, on the eighteenth day of April, 1871. That is the last I have seen of them, except the two hundred and twenty-four bonds which were canceled. I am informed and believe that afterwards eight hundred of these bonds numbered 3201 to 4000, both inclusive, were brought by S. W. Hopkins & Co., and deposited in the Supreme Court of the State of New York, and by that court placed in the hands of George G. Haven, receiver of the court. John Collinson, on the 6th of December, 1872, received the said eight hundred bonds from the said Haven, by order of the said court. That Collinson returned to the State of Florida, or its agent, and canceled two hundred and twenty-four of said bonds, 3777 to 4000, both inclusive; that eight of these eight hundred bonds, numbered 3769 to 3776, both inclusive, and (two hundred) other of these one thousand bonds, numbering 3001 to 3200 both inclusive, not included among the above eight hundred, were taken by Collinson under an optional agreement, leaving five hundred and sixty-eight bonds, 3201 to 3778, both inclusive, which were placed in the Bank of England, by order of the Chancellor, on motion of the Jacksonville, Pensacola and Mobile Railroad Company, in proceedings instituted by myself in London, England, against the Jacksonville, Pensacola and Mobile Railroad Company, to enforce special performance of a contract or

agreement, the said five hundred and sixty-eight bonds being a part of the eight hundred above mentioned. Mr. Collinson took the two hundred bonds before mentioned, under an optional arrangement dated August, 1872, in London, or under the proceedings in the Supreme Court of the State of New York.

Q. 17. Do you know to what use or purpose the two hundred and eight bonds which you say said Collinson took under an option were applied?

A. I am informed and believe that two hundred of them were taken by Collinson to provide for interest on the previous issue of three thousand bonds by the State of Florida; the other eight bonds Collinson received with some other bonds of a previous issue in settlement of some suit against Hopkins & Co., in London, under the arrangement of August, 1872.

Q. 18. What was the amount of your individual debt or lien upon said bonds, and by whom was the debt contracted—I mean the bonds numbered above 3000?

A. The lien was $40,000, and interest from August, 1872, recognized and confirmed under the arrangement in London, of that date, by the Jacksonville, Pensacola and Mobile Railroad Company with me, based upon $15,000 due to Gamble, and $25,000 to be paid to me, under an arrangement by Littlefield, president of said road, with Hopkins & Co. (to be paid to me) in 1871, the $15,000 being referred to in the papers of January 11th and 12th, 1871, before referred to, to be paid to me for Gamble.

Q. 19. Did or not the State of Florida constitute and authorize said Hopkins & Co. as its agent to receive and handle said State bonds, and to apply the proceeds according to its directions, over and above the discharge of the special liens heretofore mentioned?

A. I understood Hopkins & Co. were agents of the State of Florida, and that by the letter of April 6th, 1871, signed by Littlefield, president of the Jacksonville, Pensacola and Mobile Railroad Company, approved by the Governor of Florida, Harrison Reed, and authorized by Houston, Hopkins

& Co., were authorized to so apply the proceeds over and above the surplus liens.

Q. 20. Referring again to your answer in the suit of The Western North Carolina Railroad Company *vs.* George F. Drew, Governor *et al.*, paragraph xx, page 21, you state: "This defendant further says that in this whole transaction relating to these one thousand State of Florida bonds, number 3001 to 4000, inclusive, this defendant was acting as the agent and trustee of Edward Houston, and not of any other party, State, corporation, or individual;" does that answer express the real capacity and relation in which you acted in the handling of said bonds?

A. I was primarily agent of Houston. What I did was by direction of the president of the railroad company and with the approval of the Governor of Florida, as well as of Houston.

Q. 21. In the previous part of your examination, and under folios 40–41 of your printed answer in said suit, you state that you took the bonds above 3000 from Tallahassee to Thomasville, Georgia, by private conveyance, on or about the 21st of January, 1871; will you state why that mode of traveling was adopted? And if any reason was assigned therefor, state by whom and what was said?

A. Littlefield, president of the railroad company, provided a carriage, and sent his secretary with me from Tallahassee to Thomasville, and thence by rail to Charleston, South Carolina, as he said, for the safety of the bonds, as he said he did not know but that some other parties having claims against the road might get out an attachment and institute other suits. I intended to have gone by rail from Tallahassee by way of Live Oak, to Savannah, but took this other route by direction of Mr. Littlefield.

Q. 22. Do you know or can you state any other matter or thing material to the interest of either party to this suit not hereinbefore stated? And, if yea, state the same fully and particularly, as if thereto specifically interrogated?

A. No.

T. B. CODDINGTON.

Subscribed and sworn to before me this twenty-first day of January, A. D. 1878.

JAMES M. BALL,
R. E. STILWELL,
Examiners.

INJUNCTION BILL.—GAMBLE ET AL. *vs.* HOUSTON ET AL.

(*Schutte Record, 957–965.*)

CIRCUIT COURT OF FLORIDA, SECOND JUDICIAL CIRCUIT IN LEON COUNTY.

Robert H. Gamble and James D. Westcott, Jr., plaintiffs, in behalf of themselves and others, stockholders and members of the Florida Central Railroad Company,

VS.

Edward Houston, Mariana D. Papy, John P. Sanderson, Milton S. Littlefield, the Florida Central Railroad Company, and the Jacksonville, Pensacola and Mobile Railroad Company.

Robert H. Gamble and James D. Westcott, Jr., citizens of the State of Florida, residents of the county of Leon, plaintiffs in behalf of themselves and others like themselves, stockholders and members of the Florida Central Railroad Company, plaintiffs, bring their complaint against Edward Houston, a citizen of Florida, and likewise a resident of the county of Leon; Mariana D. Papy, a citizen of the State of Florida, and resident of the county of Leon; Milton S. Littlefield, a resident of the county of Leon; and against the Florida Central Railroad Company, a corporation created by and organized under the laws of the State of Florida, plaintiffs, complain and say: That under and by virtue of the provisions of an act of the Legislature of the State of Florida, entitled "An act to incorporate the Florida, Atlantic and Gulf Central Railroad Company and for other purposes," approved

January 24th, A. D., 1851, and of the provisions of an act of the legislature of the State of Florida, entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, approved January 7th, 1853, the Florida, Atlantic and Gulf Central Railroad Company was incorporated, and by that name the stockholders and members of said company, their successors and assigns, were authorized to construct and operate a railroad from some tributary of the Atlantic Ocean within the limits of the State of Florida having a sufficient outlet to the ocean to admit of the passage of sea steamers running through the State in the most eligible direction to some point, bay, or arm, or tributary of the Gulf of Mexico west of the Apalachicola river in West Florida having a sufficient outlet for sea steamers, and that in accordance with the rights concurred by these acts said company constructed a railway from the town of Jacksonville, on the St. John's river, in East Florida, to the town of Lake City, in the county of Columbia, and operated the same for a number of years. That in accordance with the authority granted by an act entitled "An act to provide for and encourge a liberal system of internal improvements in this State," the said Florida, Atlantic and Gulf Central Railroad Company, for the purpose of constructing the railway authorized, issued a large amount of bonds; that under the provisions of the said act and the contract therein expressed by the company these bonds constituted a first lien or mortgage on the road-bed, iron equipments, work shops, depots, and franchises of the company; that by said act and contract it was provided that in case the said company failed to pay the interest on said bonds and the sum of one per cent. per annum as a sinking fund, it was made the duty of certain trustees therein named, after the expiration of thirty days from such failure or refusal to take possession of said railroad and all its property of every kind, and advertise the same for sale at public auction to the highest bidder either for cash or additional approved security.

Plaintiffs further show unto your Honor that the said company, having failed to comply with the requirements of the

statute in reference to to the interest and sinking fund as aforesaid, and having done acts which authorized the trustees aforesaid to take possession of the road and sell the same, the said trustees took possession of said railroad extending from Jacksonville to Lake City and all its property, and after due and legal notice, and in conformity with the statute and contract sold the same at public auction on the fourth day of March, A. D. 1868; that at said sale William E. Jackson and his associates became the purchasers thereof; that the purchasers, William E. Jackson and his associates, by an act of the Legislature of the State of Florida, approved July 29th, 1868, were vested with the powers and franchise granted to the Florida, Atlantic and Gulf Central Railway Company by the aforesaid act entitled "An act to amend an act to incorporate the Florida, Atlantic and Gulf Central Railroad Company approved January 7th, 1853." And they and their successors and assigns were authorized and empowered to exercise the said powers and franchises so far only as they appertain to the railroad constructed as aforesaid by the Florida, Atlantic and Gulf Central Railroad Company from the city of Jacksonville, in Duval county, to Lake City, in Columbia county, in this State, and were made a body politic and corporate under the name and style of the Florida Central Railroad Company; that the said road if a "public work" at all, is a "completed public work," and that the Florida Central Railroad Company under its charter, which charter is a contract between the individual stockholders upon the one side, and the State and the corporation on the other, is invested with no functions, rights, or powers, except such as pertain to a completed road, and that in point of fact, the sole purpose for which the corporation exists and for which the charter was granted, is the operation, control, management, and maintenance of a complete line of railway extending from Jacksonville to Lake City; that the plaintiffs are stockholders and members of the said Florida Central Railroad Company, and that the said defendants, Milton S. Littlefield, Edward Houston, Marianna D. Papy, and John P. Sanderson are likewise stockholders and members of the said company,

and that the said John P. Sanderson is the president of the said company; that the said Littlefield is or was and now claims to be the owner and holder of a majority of the stock of the Florida Central Railroad Company.

Plaintiffs further show and state, that at the time of the sale of the said Florida, Atlantic and Gulf Central Railroad Company as aforesaid by the said trustees, a line of railroads extending from Lake City to Quincy was being operated by the Pensacola and Georgia Railroad Company, a company duly incorporated for that purpose; that said railway company in like manner as is hereinbefore stated to the Florida, Atlantic and Gulf Central Railroad Company issued bonds which were a first mortgage on its road-bed, property, and franchises; that under the act authorizing these bonds it was provided that in case the company failed to make certain payments of the interest, as well as a sinking fund to pay the principal, the trustees of the Internal Improvement fund should take possession of the railroad and all its property of every kind, and sell the same after due advertisement; that the company having so failed, a sale was made, and the road was purchased by parties, some of whom were unknown to plaintiffs; that the said purchasers subsequently transferred their bid on the said road to parties connected with the other line of railway extending from Lake City to Jacksonville.

Plaintiffs further show that subsequent to the sale a majority of the stock in both lines of railway became owned by Milton S. Littlefield, and that the said Littlefield and others devised a scheme by which, contrary to the rights of the plaintiffs, they would consolidate the two lines of railway and force the members and the stockholders of the Florida Central Railroad Company, contrary to their charter, as well as to their interest, to undertake the extension of a line of road from Quincy, Florida, to some point west in the direction of Mobile, Alabama. That in accordance with this design, the said parties who own a majority of stock in each company, or rather who own a majority of stock in the Florida Central Railroad Company, and the largest interest in the purchase of the Pensacola and Georgia Railroad Company, for they had

not then and have not now any charter to operate the Pensacola and Georgia Railroad, or the line of road once so called, obtained the passage of an act by the Legislature of the State of Florida, entitled "An act to perfect the public works in this State." That this act provided that in order to maintain and equip a railroad from Jacksonville to Pensacola, George W. Swepson, M. S. Littlefield, J. P. Sanderson, and others, their associates, successors, and assigns, were constituted a body politic and corporate under the name of the Jacksonville, Pensacola and Mobile Railroad Company, and also that the said company should be vested with the like powers, franchises, and privileges as were or are conferred by the act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, and the act to amend an act entitled "An act to incorporate the Florida and Gulf Central Railroad Company," although in fact, all the franchise and power vested by this act in so far as they pertain to the railway from Lake City to Jacksonville had been previously vested in the Florida Central Railroad Company, on already "perfected and completed public work."

Plaintiffs further allege and state that these parties or the corporation were granted the exclusive right to build a railroad with one or more tracks from Quincy to the Alabama State line, and that in order thus to build the said road, or rather to extend two already completed public railways to points further westward, the Governor of the State of Florida was directed to deliver to the president of this new corporation coupon bonds of the State to an amount equal to $14,000 per mile of the estimated length of the road from Quincy westward to the Alabama line, according to the certificate of the president under the corporate seal, and the same amount per mile for the excess above this estimate if, after the road shall be definitely located, it shall be likewise certified that the length of the road is greater than the first estimate, but said estimate shall not exceed in length the roadway already completed from Quincy to Jacksonville, and from Tallahassee to St. Mark's united, the said bonds shall be of the denomination of $1000, signed by the Governor, countersigned by the trea-

surer, sealed with the great seal of the State, shall bear seven per cent. interest, payable semi-annually, and shall be payable to bearer; they shall be dated on the first day of July, A. D. 1869, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in the city of New York as the Governor shall designate.

That said act further provided that in exchange for the bonds of the State above described, the president of the said Jacksonville, Pensacola and Mobile Railroad Company should deliver to the Governor of the State coupon bonds of the company, bearing a like rate of interest, payable to the State of Florida, signed by the president, sealed with the corporate seal, coupons payable to the State of Florida, authenticated by the written or engraved signature of the president, the bonds to be of such denomination not less than $1000, as the said company may choose, and principal and interest shall be payable at the same time and place as the aforesaid State bonds; that under the provisions of this act the State was to have a statutory lien on the entire length of the road, and on all the property of the company, and in case of failure of the company to pay either principal or interest of the bonds, it was made lawful for the Governor to enter upon and take possession of said property and franchises, and sell the same at public auction.

Plaintiffs further show unto your Honor that bonds purporting to be bonds of the Florida Central Railroad Company (which were not authorized by said act) to the extent and in the amount of $1,000,000, were issued at the instigation of the said Milton S. Littlefield. That it is claimed that these bonds constitute a statutory lien upon the line of road in which plaintiffs are interested, and that the said bonds are in the custody and control of Edward Houston, under the following circumstances, viz.: That on or about the 13th of May, A. D. 1870, defendant M. S. Littlefield was indebted to defendant E. Houston in the sum of $163,026.70 for the purchase of certain stock of E. Houston in said Florida Central Railroad Company, and no other private accounts not connected in any manner with the operation or maintenance of

the said line of road from Jacksonville to Lake City; that these bonds were about being issued and placed in the control of the said Littlefield, and that the said Houston objecting to the creation of said liens or to their passing into the hands of purchasers or to the State without security from his stock debt, the said Houston and Littlefield executed and entered into articles of agreement, of which the following is a copy:—

STATE OF FLORIDA, }
LEON COUNTY. }

This agreement, made and entered into at the city of Tallahassee, in the county and State aforesaid, between Milton S. Littlefield, party of the first part, witnesseth, that whereas the said Edward Houston owns and holds a certain draft, which is in the words and figures following, to wit:—

$163,026.70. TALLAHASSEE, May 13th, 1870.

Sixty days after date pay to the order of Edward Houston one hundred and sixty-three thousand and twenty-six 70–100 dollars, value received, and charge the same to account of, Acceptance waived, M. S. LITTLEFIELD,
J., P. & M. R. R. Co.

MESSRS. S. W. HOPKINS & CO.,
71 Broadway, New York.

For the payment of which draft the said Edward Houston has and holds as security the following securities: One hundred and three First Mortgage Bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, amounting to $103,000 of said bonds; one thousand and three hundred shares of the capital stock of the Florida Central Railroad, four drafts of George W. Swepson, M. S. Littlefield, accepted by said Littlefield; one draft for $26,520, due at six months; one draft for $27,030, due at nine months; one draft for $8050, due at fifteen months, all of said drafts bearing date August 2d, 1869, and amounting in the aggregate to the sum of $109,140, exclusive of interest thereon; and whereas the said draft of $163,026.70 was given to

the said Houston for value received in the various transactions between the parties relative to the Jacksonville, Pensacola and Mobile Railroad Company, and the Florida Central Railroad Company, growing out of the late Pensacola and Georgia Railroad Company, and said Florida Central Railroad Company, and Tallahassee Railroad Company; and whereas it is the great interest of said parties of the first and second parts that money should be raised to promote the interest of said Florida Central Railroad Company to extend and provide for the business of said company, and to pay said draft when due; and whereas the said parties of the first and second parts are owners and proprietors of more than a majority of the capital stock of said Florida Central Railroad;

Therefore Know all Men by these Presents, That the said parties of the first and second parts do hereby covenant and mutually agree, each with the other, that they do cause to be issued $1,000,000 of the First Mortgage Bonds of the Florida Central Railroad Company of like denomination and effect and condition as the First Mortgage Bonds of the Jacksonville, Pensacola and Mobile Railroad Company, which said one million of dollars of said bonds are to be placed in the hands of the said Edward Houston as additional security for the payment of said draft for $163,026.70, to be held by the said Houston in addition to the securities aforesaid for the faithful payment of said draft at maturity; *and it is further agreed*, That if the said draft is not paid at maturity, then, and in that case, the said Edward Houston is hereby authorized and fully empowered to cause said one million of dollars of the bonds of said Florida Central Railroad Company, placed in his hands as security for said draft as aforesaid, to be sold at public outcry in the city of New York after default of payment of said draft upon giving ten days' notice of said sale of said bonds, and of the time and place of said sale to Milton S. Littlefield by mail to his residence at Tallahassee, Florida, and by giving like notice to Messrs. S. W. Hopkins & Co., No. 71 Broadway, New York City, by delivering said notice at their office, and by giving ten days' notice of said sale

in the New York *Herald*, by advertisements, at which sale of said bonds the said Edward Houston may become the purchaser. And in the event of the sale being made as aforesaid the said Edward Houston, after first paying said draft and the expenses of said sale of bonds, shall pay over all the moneys arising from said sale, and all the securities now in his hands, and heretofore set forth and enumerated, to the said Milton S. Littlefield, and the said Houston shall only retain of or from said sale of bonds and securities aforesaid sufficient to pay said draft and expenses of selling said bonds.

In Witness Whereof, The said parties have hereunto set their hands and seals this thirtieth day of May, A. D. 1870.

MILTON S. LITTLEFIELD. [SEAL]
E. HOUSTON. [SEAL]

Signed, sealed, and executed in the presence of

D. P. HOLLAND,
E. K. HOLLINGER.

Plaintiffs further show and state that subsequently and on or about the seventh day of June, A. D. 1870, this agreement was modified and another agreement entered into, of which the following is a copy :—

The agreement made between Milton S. Littlefield and Edward Houston, dated the thirtieth day of May, A. D. 1870, is hereby modified, changed, and altered, as follows, to wit :—

First.—In lieu of the $1,000,000 of First Mortgage Bonds of the Florida Central Railroad Company, which by said agreement were to be placed in the hands of said Houston as security for the payment of the draft in said agreement mentioned, there shall be placed in the hands of said Houston as security for the payment of the draft in said agreement mentioned, the same amount of bonds of the State of Florida to be exchanged for the said bonds of the Florida Central Railroad Company.

Second.—If said draft be not paid at maturity, the said Houston is authorized and empowered to sell said bonds of the State of Florida at public outcry, giving the like notice of sale as provided for in said agreement, and said Houston may become a purchaser at said sale.

Third.—After first paying said draft and expenses of sale, said Houston shall, out of the balance of the proceeds arising from sale of bonds, if sufficient for this purpose, pay to John P. Sanderson the sum of $75,560; to M. D. Papy, $16,000; to T. W. Brevard, attorney of certain holders of bonds of the Pensacola and Georgia Railroad Company, if certain negotiations now pending for their purchase shall be consummated, the sum of $40,000; to John P. Sanderson, president of the Florida Central Railroad Company, the sum of $340,000; after these payments the balance, if any, to be paid to said Littlefield.

Fourth.—When said draft shall mature, said Houston, instead of selling said bonds of the State, shall have the option and choice of returning the same to the State and receiving in lieu thereof the $1,000,000 of First Mortgage Bonds of the Florida Railroad Company, exchanged for the State bonds as aforesaid.

Fifth.—If under the option and choice given to said Houston to return the bonds of the State of Florida aforesaid to said State, and receive in lieu thereof the bonds of the Florida Central Railroad Company as hereinbefore provided, said Houston upon delivering said bonds of the Florida Central Railroad Company received from the State as aforesaid, to the president of said company, shall receive and have executed and delivered to him in lieu thereof other First Mortgage Bonds of said company, which said bonds shall be made payable to bearer and shall be good, effectual, and first lien on said road.

Sixth.—Upon receiving said First Mortgage Bonds of the Florida Central Railroad Company from the president thereof, as above provided for, the said Houston shall hold the same as security for the payment of said draft, and is authorized and has the power at any time after giving thirty days' previous

notice to the president of said company, to sell the said bonds so received from the president of said company at public outcry in the city of New York, at which said Houston may become a purchaser, and said Houston shall, after first paying said draft and the expenses of said sale, dispose of and pay over the rest and residue of the proceeds of the sale of said bonds, if any, to the persons named, and for the amounts named, as provided for in the third clause hereof.

Seventh.—If said Littlefield shall pay said draft before or at its maturity, said Houston shall deposit said bonds of the State of Florida, placed in his hands under the first clause hereof, with S. W. Hopkins & Co., No. 71 Broadway, New York, with the stipulation and agreement that they, the said Hopkins & Co. shall, in disposing of said bonds, hold the proceeds of said sale subject to the claims and for the amounts mentioned in the third clause hereof, to wit: John P. Sanderson, the sum of $57,560; M. D. Papy, $16,000; T. W. Brevard, attorney of certain holders of Pensacola and Georgia Railroad bonds, the sum of $40,000, if negotiations now pending for their purchase shall be consummated; John P. Sanderson, president of the Florida Central Railroad Company, the sum of $340,000; said Hopkins & Co., after first paying the amounts above named out of the proceeds of the sale of said bonds, shall pay the rest and residue, if any, of the proceeds of the sale of said bonds to said Littlefield.

Witness our hands and seals, the seventh day of June, A. D. 1870, at Tallahassee, Florida.

M. S. LITTLEFIELD. [SEAL]
E. HOUSTON. [SEAL]

Signed, sealed, and executed in our presence, the words "the sum of $40,000" interlined on the page before signing and sealing.

(Signed) A. J. PEELER.

Plaintiffs state and allege that the said defendants Papy and Sanderson have each an interest in the bonds, as the foregoing contract discloses.

Plaintiffs further show that $1,000,000 of the State bonds instead of the company bonds passed into the hands of the said Houston originally, and that the said Houston, as well as the said Littlefield, and the said Sanderson, and the said Papy proceeded to the city of New York, where great efforts were made by the said Littlefield to sell said bonds. That, failing in this, the said Houston returned to the State of Florida bringing with him the said State bonds, and that in exchange for said State bonds, which he was authorized to do by contract and agreement with the parties, he obtained from the Governor of the State the First Mortgage Bonds of the said company, which said bonds he holds as a security for his own stock debt and the debts named in the contract, none of which are debts of the company, or if so, to but a very small amount.

Plaintiffs further show that they are informed and believe, that it is not the desire of the said Sanderson, or the said Papy, that these bonds should be surrendered by the said Houston, but they allege that the said Houston, in the event certain acts are performed by the said Littlefield, to wit, the performance of his said agreement with him, feels it his duty to deliver said bonds, and will do so unless restrained by the process of this court from so doing, and that the said Littlefield is now urging a delivery of the bonds, and there is, in the judgment of the plaintiffs, great danger that they will pass into his hands.

Plaintiffs further allege that the said Littlefield now states that he has completed arrangements, as to the State bonds, for their sale, and that he is already to deliver the bonds to the purchasers if he gets possession of them, which he proposes to do by surrendering the company's bonds to the Governor.

Plaintiffs further allege that the said bonds are, as far as the said Littlefield has any control of them under this contract, improperly under his control, and that he has no right to use the road and cover it with liens to raise money to pay private debts, notwithstanding he is the owner of a majority of the stock.

Plaintiffs as the relief which they are entitled to "demand" or pray:—

First.—That defendant Edward Houston may be restrained and enjoined, until the hearing of this cause, from in any manner disposing of said bonds by sale or otherwise, or parting with the control of the same, or delivering the same to any other person.

Second.—That the said Houston may be decreed and ordered to deliver the said bonds of the said Florida Central Railroad Company up to be canceled, as being unauthorized by, and contrary to, the rights of plaintiffs, and that the same may be canceled, and for such other relief as to your Honor may seem proper.

JAMES D. WESTCOTT, JR.,
R. H. GAMBLE.

STATE OF FLORIDA, }
LEON COUNTY. }

Before me, Edwin M. Randall, Chief Justice Supreme Court of Florida, came Robert H. Gamble and James D. Westcott, Jr., who, being duly sworn, say that the matters set up in the foregoing complaint as of their own knowledge are true, and that those stated upon information derived from others they believe to be true.

JAMES D. WESTCOTT, JR.,
R. H. GAMBLE.

Sworn to and subscribed before me the sixth day of January, A. D. 1871.

E. M. RANDALL,
Chief Justice Supreme Court of Florida.

(Endorsed.) Filed in the office of Clerk of the Circuit Court, Leon County, May 14th, 1874.

C. H. EDWARDS,
Clerk.

In the Circuit Court for the Second Judicial Circuit of Florida, in Leon County.

The State of Florida to Edward Houston, Milton S. Littlefield, Marianna D. Papy, John P. Sanderson, and the Florida Central Railroad Company, greeting:

You are hereby summoned and required to answer the complaint of Robert H. Gamble and James D. Westcott, Jr., plaintiffs, against you, which will be filed in the office of the clerk of the Circuit Court of Leon county at the court house in Tallahassee, and to serve a copy of your answer on either of the undersigned, at his office in Tallahassee aforesaid, within thirty days after service of this summons, and if you fail so to answer, the plaintiffs will apply to the court for the relief demanded in this complaint.

JAMES D. WESTCOTT, JR.,
R. H. GAMBLE.

Dated January 7th, 1871.

(Endorsed.) Due and legal notice of this summons acknowledged. M. D. Papy, Tallahassee, Florida, January 7th, 1871. Filed in the Clerk's Office, June 10th, 1874.

C. H. EDWARDS,
Clerk.

Robert H. Gamble and James D. Westcott, Jr.,

vs.

Edward Houston, Milton S. Littlefield, et alias.

On reading the complaint in this cause and upon consideration thereof, and upon the plaintiffs' entering into and undertaking without security, in the sum of $2000, as required by section 171 of the art or Code of Procedure of this State, it is considered that the prayer of said complainant for injunction be granted, and it is ordered that the said defendant Edward Houston be and he is hereby enjoined and restrained from in any manner disposing of the bonds of the Florida

Central Railroad Company in said complaint mentioned, by sale, or otherwise parting with the control of the same as to any person until the further order of this court. Adjudged and ordered at Chambers this seventh day of January, A. D. 1871.

P. W. WHITE,
Judge Second Judicial Circuit of Florida.

ACT OF THE LEGISLATURE OF FLORIDA, APPROVED JUNE 24TH, 1869.

Chapter 1716. No. 4.

AN ACT

To perfect the Public Works of the State.

The people of the State of Florida, represented in Senate and Assembly, do enact as follows :—

SECTION 1. In order to secure the speedy completion, equipping, and the maintenance of a connection by railroad between Jacksonville, on the Atlantic coast, and Pensacola, on the Gulf coast, and Mobile in Alabama, running through the State of Florida, the following named persons, viz., George W. Swepson, Milton S. Littlefield, J. P. Sanderson, J. L. ReQua, William H. Hunt, their associates, successors, and assigns, are hereby constituted a body politic and corporate, under the name of the Jacksonville, Pensacola and Mobile Railroad Company, and, as such, shall have and use a common seal, may sue and be sued, plead and be impleaded, may purchase and hold real and personal property, which may be necessary or useful for the purposes of the road, and sell and convey the same in fee, or for a less estate, or by way of mortgage or otherwise, and may make and enforce for the government of the corporation such by-laws and regulations not contrary to the Constitution and laws, as they may deem best. The said company is hereby vested with the like powers,

franchises, and privileges as were and are conferred by the act to incorporate the Florida, Atlantic and Gulf Central Railroad Company, and the act to amend an act entitled An act to incorporate the Florida, Atlantic and Gulf Central Railroad Company.

SEC. 2. The said corporators, associates, successors, and assigns, shall have power to fix the capital stock of the company, the shares of which shall be one hundred dollars each, and shall designate the times and places of holding the meetings of the company. The first meeting shall be called within thirty days after this act goes into operation, by notice signed by either of the following named corporators, viz.: George W. Swepson, Milton S. Littlefield, J. P. Sanderson. The said corporators, their associates, successors, and assigns, shall prescribe the number of directors of this company and their term of service, and likewise the term of office, compensation, and duties of the president and all other officers. A majority of the corporators shall be a quorum to do business.

SEC. 3. The directors, or a majority of them, shall have power to transact all business of the company, unless otherwise ordered by the stockholders; may declare dividends of profits, if any, and, in general, make and enforce all such rules and regulations consistent with the by-laws of the company, as they may deem fit.

SEC. 4. The Jacksonville, Pensacola and Mobile Railroad Company shall have the exclusive right for twenty years to build a railroad, with one or more tracks, from the terminus of the Pensacola and Georgia Railroad at Quincy, touching at Marianna, in Jackson county, and at a point within five miles from Eucheeanna in Walton county, thence touching at Milton, in Santa Rosa county, to the Alabama State line, in the direction of Mobile in Alabama, crossing the Pensacola and Louisville Railroad north of Pensacola, with the privilege of continuing the same to Mobile, and of connecting with any railroad running to Mobile.

SEC. 5. The said company shall have the right and privilege to construct said railroad for the transportation of passengers, produce, goods, wares, and merchandise, and all other

articles whatsoever through any lands of the State of Florida; and the right of way is hereby granted for the same, two hundred feet in width, with the right to take stone, timber, earth, and materials, from any land belonging to the State, to be used in the construction, maintenance, and repairs of said railroad.

SEC. 6. The said company is hereby authorized to contract for and receive conveyances of land, timber, and other materials which may be required by the directors in the construction, operating, maintenance, and repair of said railroad; and when the owner and company cannot agree upon the price, or when the owner is an infant, non-resident, or *non compos mentis*, then it shall be lawful for the said company t apply to the sheriff of the county in which said lands or property are located, who shall summon the jury of seven disinterested freeholders, a majority of whom shall be authorized to assess the damages and return their award or judgment to the first circuit court of the county in which the said lands or other property may be located, which shall be entered by the clerk as the judgment of the court, and execution may issue thereon for the amount of said judgment and costs. Either party dissatisfied with the assessment may appeal to the next term of the circuit court, on giving security for the prosecution of the appeal. Before proceeding to the discharge of the duties herein required, the jurors summoned as aforesaid shall take an oath or affirmation, to be administered by the sheriff that they will well and truly inquire in, and to the best of their judgment, assess the damages accruing to the owner or owners of said land or materials by means of the proposed construction: *Provided*, That said work and the progress of construction of said road shall in no wise be delayed on account of the proceedings had or to be had as aforesaid.

SEC. 7. The property so assessed and paid for by said railroad company, in conformity with the provisions of this act, and all donations from any source for the same, shall for ever afterwards belong to and become the property of said railroad company, its successors, in fee simple. Subscriptions to the capital stock of said railroad company may be made in

lands, labor, and material, upon such terms as may be agreed upon by the directors and the owner or owners thereof.

SEC. 8. The directors of said company shall have the right to demand and receive such prices and sums for fare and the transportation of freight, produce, and merchandise as may be authorized and fixed by the by-laws of said company.

SEC. 9. In order to aid the said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the president of the said company coupon bonds of the State to an amount equal to $14,000 per mile of the estimated length of the road from Quincy westward to the Alabama line, according to the certificate of the president, under the corporate seal, and the same amount per mile for the excess above this estimate, if, after the road shall be definitely located, it shall be likewise certified that the length of the road is greater than the first estimate, but said estimate shall not exceed in length the roadway already completed from Quincy to Jacksonville, and from Tallahassee to St. Mark's united. The said bonds shall be of the denomination of $1000, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the State, shall bear seven per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be dated on the first day of July, 1869, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in New York City as the Governor shall designate. The coupons for interest shall be payable to bearer, and shall be authenticated by the written or engraved signature of the Treasurer.

SEC. 10. In exchange for the bonds of the State above described, the president of the company shall deliver to the Governor of the State coupon bonds of the company, bearing a like rate of interest, payable to the State of Florida, signed by the president, sealed with the corporate seal; coupons payable to State of Florida, authenticated by the written or engraved signature of the president. The bonds shall be of

such denominations, not less than $1000, as the said company may choose, and principal and interest shall be payable at the same time and place as the aforesaid State bonds.

SEC. 11. To secure the principal and interest of the said company bonds, the State of Florida shall by this act have a statutory lien, which shall be valid to all intents and purposes as a mortgage duly registered on the part of the road, on the estimated length of which the State bonds were delivered, and on all the property of the company, real and personal, appertaining to that part of the line which it may now have, or may hereafter acquire, together with all the rights, franchises, and powers thereto belonging, and in case of failure of the company to pay either principal or interest of its bonds, or any part thereof, for sixty days after the same or any installment thereof shall become due, it shall be lawful for the Governor to enter upon and take possession of said property and franchises, and sell the same at public auction for cash, on such notice as he may prescribe so as to protect the State.

SEC. 12. For the protection and additional security of the State in the issue of the bonds authorized in the preceding section, the Jacksonville, Pensacola and Mobile Railroad Company shall deposit with the State Treasurer good and sufficient security, to be approved by the Treasurer, for the payment of all interest that may become due on the State bonds issued to them, until the completion of the said railroad, and shall also give to the State, before the issue of said bonds, as additional security for the faithful application of said State bonds, a lien upon the entire railroad from Quincy to Jacksonville, and from Tallahassee to St. Mark's, which lien shall be canceled as the road is completed in sections of twenty miles, to wit: that when twenty miles of the road west of Quincy shall be completed and in running order, twenty miles of the road east of Quincy shall be released from said lien, and so on in like proportion the said lien shall be released until the completion of the road to the Alabama State line, which said lien shall be fully canceled and discharged.

SEC. 13. The said Jacksonville, Pensacola and Mobile Railroad Company may at any time before the maturity of its

bonds discharge its debt to the State, or any part thereof, by payment in national currency, or in the bonds of the State: *Provided*, That this shall not be construed to include indebtedness incurred in the aid of the rebellion.

SEC. 14. It shall be lawful for the several companies owning the roads or parts of roads from Quincy to Jacksonville, from Tallahassee to St. Mark's, and the branch to Monticello, or either of said companies, by vote of the owners of a majority of the stock in interest, and with the consent of the owners of a majority of the stock in interest, of the Jacksonville, Pensacola and Mobile Railroad Company, to consolidate with the latter company so as to become one corporation under its name, on such terms as may be agreed on, and said companies are authorized to settle the terms of consolidation by arbitration or otherwise. And with like consent of the owners of a majority of the stock of each company, with such consolidation, they are authorized to make such arrangements with reference to a common management and schedule as may be agreed on, and after consolidation the said Jacksonville, Pensacola and Mobile Railroad Company shall have the privilege to raise money by way of mortgage or assignment, in trust, of the railroad and property, franchise and effects acquired by such consolidation, so as to secure the lenders. The said Jacksonville, Pensacola and Mobile Railroad Company, as to the road or roads, or parts of roads thus acquired, may likewise issue coupon bonds, or other evidences of debt, with coupons or otherwise, bearing such rate of interest and payable at such time and place and on such terms as the directors may determine, and to each are hereby granted the same privileges as are herein granted to the Jacksonville, Pensacola and Mobile Railroad Company.

SEC. 15. The consolidation of any of the companies with the Jacksonville, Pensacola and Mobile Railroad Company, under the provisions of this act, shall not operate to relieve the road or roads, or parts of roads, united by such consolidation with the Jacksonville, Pensacola and Mobile Railroad, from their existing liability to pay any debts or obligations of the company owning the same before consolidation, but the

Jacksonville, Pensacola and Mobile Railroad Company shall not be responsible for any such debts or obligations.

SEC. 16. The Jacksonville, Pensacola and Mobile Railroad Company, the Florida Railroad Company, and all companies organized under an act entitled "An act to provide for and encourage a liberal system of internal improvements in the State," shall be bound to transport freight for the State at half the usual rates, except in time of war, when the charge for freights shall not exceed twenty-five per cent. over actual cost. In consideration of this liability and of the undertaking by the company to build the road herein contemplated, no railroad competing with this road for passengers or freight, which has its terminus west of Quincy, shall be hereafter built or authorized within this State, without the consent of the owners of a majority of the stock in interest of this and all other railroad companies, any part of whose road is now completed or authorized to be completed, nor without such consent shall any railroad be authorized to cross or connect tracks, or continue such connection with said Jacksonville, Pensacola and Mobile Railroad: *Provided*, That it shall be the duty of the said Jacksonville, Pensacola and Mobile Railroad to connect tracks with any roads which may be made from Apalachicola or St. Andrew's Bay to the main line of the road of said company: *Provided further*, This shall not be so construed as to prevent the running of a branch from some point on said road to strike Choctawhatchie Bay, between the mouth of Choctawhatchie river and Boggy Bayou.

SEC. 17. The Jacksonville, Pensacola and Mobile Railroad Company, the Florida Railroad Company, and the Pensacola and Louisville Railroad Company shall have the power to own and run steamships and other craft to and from any of the ports of Florida, and may enter or depart with or without pilots and likewise in any of the navigable waters within the jurisdiction of the State.

SEC. 18. The said Jacksonville, Pensacola and Mobile Railroad Company shall, in the construction of said railroad, have the right to build and construct all bridges necessary to cross any and all rivers, but in crossing navigable rivers suitable

draws shall be constructed to admit the passage of all steamboats and other water craft usually navigating such rivers, which draws shall always be kept in good order, and ready to be opened whenever necessary.

SEC. 19. That the gauge of said railroad shall be uniformly five feet, and the iron rail to be used shall weigh not less than fifty-four pounds per lineal yard, and the said railroad shall in all respects be a first-class road.

SEC. 20. That the said railroad shall be completed from Quincy to the Apalachicola river by the first day of January next, and the whole line within this State shall be completed within three years from the passage of this act.

SEC. 21. That said Jacksonville, Pensacola and Mobile Railroad Company and all railroad companies organized under the act of June 16th, 1855, relating to internal improvements, shall provide first and second class cars for the accommodation of passengers, for each of which fare shall be charged at proportionate rates, and passengers, without distinction, paying fare for first-class cars, shall be entitled to seats in such cars, and passengers paying fare for second-class cars shall be entitled to seats in second-class cars; and any conductor, superintendent, or agent of any railroad train of any company mentioned in this act, who shall refuse a seat in a first-class car to any person holding a first-class ticket, shall be subject to arrest on the warrant of any judge of any county through which said train may pass, and be liable for a fine of not less than $100 or more than $500.

SEC. 22. That the Jacksonville, Pensacola and Mobile Railroad Company, and all other corporations existing under the laws and by the authority of this State, shall by public advertisement in a newspaper, printed at the seat of government, declare the place within the State at which their principal office of business shall be considered as located, and such place shall thereafter be taken to be the residence of such corporation, and all contracts made by authority of such corporation shall be considered as made in the place at which such principal office is located.

SEC. 23. The Governor shall appoint a competent engineer to have general supervision of the various roads provided for

under this act, and whose duty it shall be to protect the interests of the State, and see that the work is carried on and conducted in all respects in compliance with law, and shall, from time to time, report to the Governor. The salary of such engineer shall be paid by the companies interested, and shall in no case be chargeable to the State.

SEC. 24. That the corporation of the Jacksonville, Pensacola and Mobile Railroad Company shall be and continue for the term of thirty-five years from the date of the passage and approval of this act. This act shall be deemed and held a public act.

SEC. 25. That for the further purpose of completing that part of the line of railroad from Amelia Island on the Atlantic to the waters of Tampa Bay, in South Florida, provided for in the act of January 6th, 1855, "to provide for and encourage a liberal system of internal improvements in this State," which remains to be constructed; it is hereby provided that it shall be lawful for any corporate company which may have or acquire the right to construct the same, to execute and deliver to the Governor of the State of Florida for the time being a deed of trust, conveying to said Governor and his successors in office all the rights, franchises, and privileges possessed by such company, or thereafter to be acquired, and all the tracks, line, and road-beds upon such road, owned by such company, or thereafter to be acquired, in trust and as security for the ultimate payment to the holder or holders thereof of the principal and interest of the bonds of such company, amounting to the sum of $14,000 per mile upon such company's road; said bonds to be of the denomination of $1000 each, the principal sum payable in thirty years, and bear interest at the rate of seven per cent. per annum, payable semi-annually, and have coupons or interest warrants attached in accordance thereto; said bonds to be executed by such company under the seal thereof; and the Governor of the State of Florida for the time being is hereby directed to join with the said company in the deed of trust; and he and his successors in office are hereby charged with the execution of the trust contained therein. Said deed

of trust shall be recorded in the proper offices for the record of deeds in the several counties through which the said company's railroad is to pass.

SEC. 26. As soon as any of such companies shall have built and completed ten consecutive miles of their said railroad, the iron to be of a weight not less than fifty-four pounds to the yard, such company shall present to the Governor of the State of Florida for the time being the bonds of the said company, such as are described in the preceding section of this act, amounting in the aggregate to $14,000 per mile upon the road so prepared, and from time to time thereafter, as often as said company shall have completed any additional five miles, said company may present to said Governor the bonds of such company, amounting to $14,000 per mile, until the whole of such road is completed; and the said Governor for the time being shall make an endorsement on the back of each of said bonds, and shall sign the same as Governor of the State of Florida, which endorsement shall be as follows: "I certify that the within is one of a series of bonds issued by the company (naming the company), and amounting in the aggregate to the sum of $14,000 per mile upon said railroad, secured by deed upon said company's railroad, and all the rights, franchises, and real and personal property of the said company, executed to the Governor of the State of Florida, as trustee, on the day of A. D. The payment of the principal and interest of the within bond, according to the terms thereof, is hereby guaranteed by the State of Florida, in pursuance of, and in obedience to, an act of the Legislature of said State, approved the day of A. D. 1869;" and the Governor shall deliver the bonds so certified and guaranteed to the president of said company, or other officer authorized by the board of directors of such company to receive the same, and the payment of the principal and interest of said bonds to the holders thereof, according to the terms thereof, is hereby guaranteed by the State of Florida.

SEC. 27. That in case any company engaged in building the said unconstructed part of the line between Amelia Island

and the waters of Tampa, shall prefer to take bonds of the State instead of endorsed bonds as provided for in the two preceding sections, the Governor of the State is hereby authorized to substitute State bonds similar in character to those issued in aid of the Jacksonville, Pensacola and Mobile Railroad Company in virtue of the provisions of this act, and in such case the Governor shall demand and receive the company bonds for the same amount in exchange for such State bonds, in the same manner as prescribed in the case of the Jacksonville, Pensacola and Mobile Railroad Company: *Provided, however*, That such bonds shall only issue in proportion as sections of the road are completed according to the stipulations of the last preceding section.

SEC. 28. If default shall at any time be made by said company in the payment of principal or interest of the bonds of said company when due, for sixty days after the same may fall due, the said Governor shall take possession of said road, and all the property, real and personal, connected therewith, and all the franchises of said company, and may operate the road for the protection of the State and for the benefit of the trust, or may sell the same, with all the franchises and property of the company, in accordance with the condition of the deed of trust, and according to law, for the benefit of the said trust.

SEC. 29. That in all cases of seizure and sale of the railroad property and franchises of any company the trustees of the internal improvement fund, under the provisions of the act to provide for and encourage a liberal system of internal improvements, the purchaser or purchasers shall be entitled to do whatever acts may be necessary to enable him or them to exercise and enjoy the franchises granted by the charter of incorporation, under the provisions of the said original charter and the amendments thereto. And in order to prevent doubt, it is hereby declared that all the provisions of the internal improvement act above referred to, and which act constituted a contract between the State and the companies, shall continue to apply to the said corporations so newly organized in the same manner as the same were applicable to the corporations

which existed under the same charters prior to the sale: *Provided*, That this section only applies to roads built under said internal improvement act, and shall not authorize the issue of bonds exceeding $14,000 per mile, as provided in section 26, nor any other pecuniary aid by endorsement or otherwise, and that nothing in this section herein contained shall in any wise affect any special act relating to the sales of the Atlantic and Gulf Railroad, or the Pensacola and Georgia and Tallahassee Railroad, or the rights acquired under said sales.

SEC. 30. That the Jacksonville, Pensacola and Mobile Railroad Company and the Florida Railroad Company shall, at reasonable times and for a reasonable compensation, draw over their respective roads the passengers, merchandise, and cars of each other, and shall give and receive through, waybills for freight, through tickets for passengers, and through checks for baggage, to and from all points on their respective roads, and shall make no unequal discrimination for or against each other in their joint through passenger and freight rates or in the division of the same; it being the true intent and meaning of this act to require the said railroad corporations to give as good facilities and as favorable rates, terms, and additions to each other as they enjoy themselves. If the corporations cannot agree upon the stated periods at which their cars shall be so drawn, and the compensation to be paid, the judge of the Circuit Court of the district in which either of the companies reside, upon the petition of either party and notice to the other, shall appoint three disinterested commissioners who are experienced in such matters, who, after due notice to and hearing the parties interested, shall determine such rates, terms, and conditions, and fix such periods, having reference to the convenience and interest of the corporations, and the public to be accommodated thereby; and the award of the commissioners, or a major part of them, shall be binding upon the respective corporations interested therein until the same shall have been revised or altered by commissioners to be so appointed; but no revision or alteration shall be made within one year after the award, without the consent of the companies.

SEC. 31. All the rights, franchises, privileges, and conditions granted and prescribed in this act are hereby granted and applied to any company that is now or hereafter may be organized for the purpose of building a railroad from the waters of Tampa Bay and Charlotte Harbor, on the Gulf, by the way of Ocala, and ending at Gainesville, on the Florida Railroad, and from Marianna in the county of Jackson, to the waters of St. Andrew's Bay in West Florida, and also to the waters of Apalachicola Bay in West Florida, and to a point on the Choctawhatchie Bay, between the mouth of Choctawhatchie river and Boggy Bayou, and from Palatka and Mellonville, on the St. John's river, to the nearest practicable point on the line of railway from Tampa Bay or Charlotte Harbor to Gainesville, as far as the same can be constitutionally granted. The said railroad company from Palatka is hereby authorized to connect and be entitled to all the benefits of section 30.

SEC. 32. That the local rates for freight and passengers on the Jacksonville, Pensacola and Mobile Railroad, and the Florida Railroad, shall not exceed at any time the usual rates for similar distances upon the railroads of the adjacent States.

SEC. 33. That all acts or parts of acts inconsistent herewith are hereby repealed.

Approved June 24th, 1869.

AN ACT OF THE LEGISLATURE OF FLORIDA, APPROVED JANUARY 28TH, 1870.

Chapter 1731. No. 1.

AN ACT

To alter and amend an act entitled "An act to perfect the Public Works of the State," approved June 24th, 1869.

SECTION 1. The people of the State of Florida, represented in Senate and Assembly, do enact as follows: That section 4

of an act entitled An act to perfect the public works of the State, approved June 24th, 1869, which reads as follows: "Sec. 4. The Jacksonville, Pensacola and Mobile Railroad Company shall have the exclusive right for twenty years to build a railroad, with one or more tracks, from the terminus of the Pensacola and Georgia Railroad at Quincy, touching at Marianna in Jackson county, and at a point within five miles of Eucheeana in Walton county, thence touching at Milton in Santa Rosa county, to the Alabama State line, in the direction of Mobile in Alabama, crossing the Pensacola and Louisville Railroad north of Pensacola, with the privilege of continuing the same to Mobile, and of connecting with any railroad running to Mobile," be altered and amended so as to read as follows:—

The Jacksonville, Pensacola and Mobile Railroad Company shall have the exclusive right for twenty years to build a railroad, with one or more tracks, from the terminus of the late Pensacola and Georgia Railroad, now the Tallahassee Railroad, at Quincy, Gadsden county, to the dividing line between the States of Florida and Alabama, in the direction of the city of Mobile, Alabama, running through the counties of Gadsden, Jackson, Holmes, Washington, Walton, Santa Rosa, and Escambia, crossing the Pensacola and Louisville Railroad, with the privilege of continuing the same to Mobile, and of connecting with any railroad running to Mobile: *Provided, however*, That in the construction of said railroad the line west of the Chattahoochee river shall not, in any instance, be run, or the road built, nearer than fifteen miles of the north line of the State of Florida.

SEC. 2. That section 9 of said act, entitled "An act to perfect the public works of the State," which reads as follows: "Sec. 9. In order to aid the said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the president of the company coupon bonds of the State to an amount equal to $14,000 per mile of the estimated length of

the road, from Quincy westward to the Alabama line, according to the certificate of the president, under the corporate seal, and the same amount per mile for the excess above this estimate, if, after the road shall be definitely located, it shall be likewise certified that the length of the road is greater than the first estimate, but said estimate shall not exceed in length the roadway already completed from Quincy to Jacksonville, and from Tallahassee to St. Mark's united. The said bonds shall be of the denomination of $1000, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the State, shall bear seven per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be dated on the first day of July, 1869, and shall be due thirty years thereafter, and principal and interest shall be payable at such place in the city of New York as the Governor shall designate. The coupons for interest shall be payable to bearer, and shall be authenticated by the written or engraved signature of the Treasurer;" be altered and amended so as to read as follows:—

In order to aid the said Jacksonville, Pensacola and Mobile Railroad Company to complete, equip, and maintain its road, and to aid in perfecting one of the public works embraced in the internal improvements of the State, the Governor of the State is hereby directed to deliver to the president of the said company coupon bonds of the State to an amount equal to $16,000 per mile for the whole line of road and length of railroad owned by or belonging to said Jacksonville, Pensacola and Mobile Railroad Company, in exchange for first mortgage bonds of said railroad company, of the denomination of $1000, when the president thereof shall certify upon his oath, that the road or parts of road for which he asks for an exchange of bonds is completed, and is in good running order. The said bonds shall be of the denomination of $1000, signed by the Governor, countersigned by the Treasurer, sealed with the great seal of the State; shall bear eight per cent. interest, payable semi-annually, and shall be payable to bearer. They shall be dated on the first day of January, A. D. 1870, and shall be due thirty years thereafter, and principal and interest

shall be payable at such place in the city of New York as the Governor shall designate. The coupons for interest shall be payable to bearer, and shall be authenticated by the written or engraved signature of the Treasurer: *Provided, however,* That whenever the Jacksonville, Pensacola and Mobile Railroad Company shall or may determine to pay the interest in gold for or upon their bonds or the bonds designated in the tenth section of an act entitled "An act to perfect the public works of the State," approved June 24th, 1869, upon giving notice to the Governor of such intention, then the State bonds aforesaid and the coupons for interest on said bonds shall be payable in gold, notice of which shall be given by the Governor in some paper published in the city of New York, and at the capital of this State, to be designated by the Governor.

SEC. 3. That section 11 of said act entitled "An act to perfect the public works of the State," approved June 24th, 1869, which reads as follows: "Sec. 11. To secure the principal and interest of the said company bonds, the State of Florida shall, by this act, have a statutory lien, which shall be valid to all intents and purposes as a mortgage duly registered on the part of the road, on the estimated length of which the State bonds were delivered, and on all the property of the company, real and personal, appertaining to that part of the line which it may now have, or may hereafter acquire, together with all the rights, franchises, and powers thereto belonging, and in case of failure of the company to pay either principal or interest of its bonds, or any part thereof, for sixty days after the same or any installment thereof shall become due, it shall be lawful for the Governor to enter upon and take possession of said property and franchises, and sell the same at public auction for cash, on such notice as he may prescribe so as to protect the State;" be altered and amended so as to read as follows:—

To secure the principal and interest of the said company bonds the State of Florida shall, by this act, have a statutory lien, which shall be valid to all intents and purposes as a first mortgage duly registered on the part of the road for which

the State bonds were delivered, and on all the property of the company, real and personal, appertaining to that part of the line which it may now have or may hereafter acquire, together with all the rights, franchises, and powers thereto belonging, and in case of failure of the company to pay either principal or interest of its bonds or any part thereof for twelve months after the same shall become due, it shall be lawful for the Governor to enter upon and take possession of said property and franchises and sell the same at public auction, after having first given ninety days' notice by public advertisement in at least one newspaper published in each of the following places: the city of New York in the State of New York, the city of Savannah in the State of Georgia, and the city of Tallahassee in the State of Florida, for lawful money of the United States, and for nothing else, except that the State, for its own protection, may become the purchaser at said sale, and may pay on said purchase any evidences of indebtedness the State may hold against said roads, which purchase-money, or said evidences of indebtedness, shall be paid on the day of sale into the treasury of this State, or within ten days thereafter; and all moneys arising from said sale and paid into the treasury of this State, as heretofore prescribed, shall be promptly and exclusively applied to the payment and satisfaction of the bonds issued by the State of Florida under this act, and in case the holders of said bonds do not present them for redemption within ninety days after said sale the Treasurer shall invest the same, or any part thereof which may be remaining in his hands, in the securities of the United States, to be held by the State of Florida as trustee for the bondholders until said bondholders shall demand the same, upon which demand the Treasurer shall immediately turn over or pay said securities to the bondholders. The purchaser or purchasers of said road shall be by said sale possessed of all the rights, privileges, and franchises of said defaulting company, together with the franchise of use and being a body politic, and the Governor shall upon the payment of said purchase-money into the treasury of this State, as above provided, immediately cause the purchaser or purchasers of said road at said

sale to be placed in the actual possession, use, and enjoyment thereof, and cause all the books, papers, and real and personal property of said company of every description, together with its franchise of use and being a body politic and corporate, to be turned over to said purchaser or purchasers, and the purchaser or purchasers of said road shall be by said sale possessed of all the rights, privileges, and franchises of said defaulting company, together with the franchise of use, and being a body politic and corporate, and may use any new corporate name they see fit, and make and use a new seal upon signifying their action in writing to the Governor, and thereafter may exercise all the rights of a body corporate and privileges thereof, and of said defaulting company under said new name for the term of thirty-five years, to date from the time of the purchase aforesaid. That any such sale shall be ratified by the legislature before the same shall become effective.

SEC. 4. That the Governor shall, for the purpose of further aiding said Jacksonville, Pensacola and Mobile Railroad Company in the speedy construction of its road, deliver to the president of said company coupon bonds of this State of the same character as those above described in this act to the amount of $16,000 per mile upon receiving for and from the president of said company first mortgage bonds of like amount on any part or portion of the road between Quincy and Jacksonville: *Provided, however*, The State bonds under this section shall not be exchanged for first mortgage bonds of a greater length than one hundred miles of any part of railroad between Quincy and Jacksonville: *Provided*, The said railroad company or companies shall not issue first mortgage bonds to a greater amount than $16,000 per mile.

SEC. 5. That section 12 of said act, entitled "An act to perfect the public works of the State," which reads as follows: "Sec. 12. For the protection and additional security of the State in the issue of the bonds authorized in the preceding section, the Jacksonville, Pensacola and Mobile Railroad Company shall deposit with the State Treasurer good and sufficient security, to be approved by the Treasurer, for the

payment of all interest that may become due on the State bonds issued to them until the completion of the said railroad, and shall also give to the State before the issue of said bonds as additional security for the faithful application of said State bonds, a lien upon the entire railroad from Quincy to Jacksonville, and from Tallahassee to St. Mark's, which lien shall be canceled as the road is completed, in sections of twenty miles, to wit: that when twenty miles of the road west of Quincy shall be completed and in running order twenty miles of the road east of Quincy shall be released from said lien, and so on in like proportion the said lien shall be released until the completion of the road to the Alabama State line, when said lien shall be fully canceled and discharged;" be and the said section 12 aforesaid is hereby repealed.

SEC. 6. That section 20 of said act, entitled "An act to perfect the public works of the State," which reads as follows: "Sec. 20. That the said railroad shall be completed from Quincy to the Apalachicola river by the first day of January next, and the whole line within this State shall be completed within three years from the passage of this act;" be so altered and amended as to read as follows:—

That the said railroad shall be completed from Quincy to the Apalachicola river by the first day of July, A. D. 1870, and the whole line within this State shall be completed within five years from the passage of this act. Otherwise all chartered rights vested in this act shall be forfeited to the State.

SEC. 7. That all acts and doings of the corporators, stockholders, and board of directors of the Jacksonville, Pensacola and Mobile Railroad Company, under and by virtue of an act entitled "An act to perfect the public works of the State," approved June 24th, 1869, in relation to the organization and management of said Jacksonville, Pensacola and Mobile Railroad Company, are hereby approved and confirmed and declared to be of full force and effect.

SEC. 8. That the act published as chapter 1716—(No. 4), in pamphlet form, under the direction of the Attorney-General, by authority of law, as the acts and resolutions adopted by the Legislature of Florida, at its extra session, beginning June

8th, 1869, under the Constitution of A. D. 1868, wherein from page 29 to page 38 inclusive is found and published an act entitled "An act to perfect the public works of the State," approved June 24th, 1869, and printed at Tallahassee, Florida, by Edw. M. Cheney, State printer, is hereby declared to be an act and law of the State of Florida, of which this act is an alteration and amendment.

SEC. 9. That this act shall be deemed and held to be a publict act, and all laws and parts of laws conflicting with this act be and they are hereby repealed.

Approved January 28th, 1870.

Office Supreme Court U. S.
FILED
JAN 28 1888
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

PIERRE FAYOLLE and others

vs.

THE TEXAS AND PACIFIC RAILROAD COMPANY.

No. 890.

Motion to Dismiss by the Appellee.

ANSWER OF THE APPELLANTS TO THE MOTION.

AFFIDAVIT.

UNITED STATES OF AMERICA, *District of Columbia*, } ss.:

JAMES COLEMAN, being duly sworn, doth depose and say:

That he was formerly of the firm of Carpenter & Coleman, consisting of Hon. Matt. H. Carpenter and himself, doing business in the City of Washington.

That this deponent is informed and believes, that the said Matt. H. Carpenter was retained in the above entitled cause prior to such partnership. That he, the said Senator Carpenter, filed the bill in equity herein, and to the time of his death, in February, 1881, had the exclusive care, and management and control of the said cause.

This deponent further says, that subsequent to the death of Senator Carpenter he was requested to take the appeal from the order sustaining the demurrer in said cause to the Supreme Court of the United States. That he was not retained in said cause further than as aforesaid, and was requested

to and did perfect said appeal more for the reason that it was unfinished business left by Senator Carpenter, at the time of his death, than any other.

This deponent further says, that in perfecting said appeal in the Clerk's office of the District Court, he found that many of the papers necessary to complete the transcript of the record in the cause had been lost or mislaid and could not be found. That finally he was enabled to perfect said appeal by substituting for the lost papers others which were furnished him to enable him to perfect said appeal by the counsel for the defence, so that said appeal was perfected and the transcript of the record in the said cause ready to be filed in the Supreme Court on the 24th day of March, A. D. 1885.

That at the time aforesaid this deponent had an office in Wisconsin, and was then remaining in Washington, mainly for the purpose of closing up the business of the said firm of Carpenter & Coleman.

That after he had procured said appeal to be perfected as aforesaid, the Deputy Clerk of the said District Court agreed with this deponent that he, the said Clerk, would take the said record and file the same with the Clerk of the Supreme Court, and this deponent, relying upon said agreement, left the same with him for that purpose, as he was then expecting to leave the City for Wisconsin, where deponent then resided.

This deponent further says, that his name appears on the docket of this Court as Attorney of Record in said cause, and he may have entered an appearance therein, but that if so, it was merely formal, as what he did in said cause was without fee or compensation; and that he, at the time he was requested to take said appeal, understood that it was the intention of the complainants to retain other counsel in the case who were familiar with the same. That as deponent was informed and believes, Hon. Jeremiah S. Black was counsel in said

cause after Senator Carpenter's death, and remained such down to the time of the death of the said Jeremiah S. Black, which this deponent is informed and believes, occurred in the month of A. D. 1883.

J. COLEMAN.

Sworn and subscribed before me, January 24, 1888,

[L. S.] A. S. TAYLOR, *Notary Public.*

BRIEF.

It is proper to state at the outset that the present counsel for the appellants had no connection with or knowledge of this case till November 9th, 1887, when they were retained by the appellants by letter from France, where all the appellants, except one, reside. We have been and are still ignorant of the address of the single appellee, who resides in Vermont. We have not the slightest reason to suppose that any of the appellants were or even now are aware of the alleged defect.

After diligent inquiry we have been unable to obtain any definite facts in regard to the appeal, except those contained in the foregoing affidavit.

From that it appears that, notwithstanding the death of two counsel of the appellees and the loss of the papers from the files of the Court below, the appeal, which had been prayed and allowed in open Court, and the required bond given, was perfected March 24, 1885; it was then ready to be filed in this Court, and was left with the Clerk of the Court below for that purpose. In due course it should have been filed on or before this Court adjourned, which was May 4, 1885, the end of the term to which the appeal was properly returnable.

But the transcript does not appear to have reached the Clerk's office of this Court till June 12, 1885, a month and more after the close of the foregoing term.

I.

It, of course, must be conceded, under the repeated decisions of this Court, that if the delay to transmit the record on or before May 4, 1885, is chargeable as laches to the appellants, then their appeal must be dismissed.

But, as their appeal was prayed out in open Court, and allowed, their bond filed, the transcript of the record completed and left with the Clerk below in time, with the understanding that he was to send it up, we submit that his omission to do so ought not to be charged to the appellants as laches under the circumstances. We do not understand this to be a mere question of jurisdiction.

Grigsby vs. *Purcell*, 99 U. S. 505, 507.

II.

As to the absence of a citation. This appeal having been prayed for and allowed in open Court, the appellee had notice, and no citation was necessary. The object of the citation is to give notice of the appeal to the appellees. (*Dodge* vs. *Knowles*, 114 U. S. 430, 438.) Not only was the appeal taken in open Court notice, but as late as March, 1885, the prosecution of the appeal was brought to the notice of appellees' counsel, when he courteously stipulated that a copy of a large part of the record might be substituted for the original, which had been lost. This stipulation forms part of the record and is prefixed to the bill in the transcript.

We submit, therefore, that the want of a citation furnishes no support to this motion.

SHIPMAN, BARLOW, LAROCQUE & CHOATE,
Solicitors for Appellants.

WM. D. SHIPMAN,
Of Counsel.

124-519 Dismissed Feb. 16/88

Office Supreme Court U. S.
FILED.
DEC 14 1887
JAMES H. McKENNEY,
CLERK.

124-519

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

PIERRE FAYOLLE *et al.*

vs.

THE TEXAS AND PACIFIC RAILWAY COMPANY.

No. 890.

The appellee in the above entitled cause, by W. D. Davidge and William H. Trescott, its solicitors, appearing specially for the motion, now moves the Court to dismiss the said cause for the want of jurisdiction, because,

First. The transcript of the record was not filed in this Court, and the cause docketed at the term next after the appeal was prayed and allowed.

Second. No citation was issued.

W. D. DAVIDGE,
WILLIAM H. TRESCOTT,
Solicitors for Appellee

Brief.

I. The decree appealed from bears date Nov. 12, 1883, R. 253. On the same day the appeal was prayed in open court and allowed. The transcript of

the record was filed and the cause docketed in this court January 17, 1887, more than three years after the appeal was prayed and allowed. The term of this Court next after the allowance of the appeal, and to which the appeal was returnable, ended May 4, 1885, when the Court adjourned. The appeal then became *functus officio* and of no avail.

Caillot v. *Deetken*, 113 U. S., 215;
Edmonson v. *Bloomshire*, 7 Wall., 306;
The Virginia v. *West*, 19 How. 182;
Mesa v. *United States*, 2 Black, 721;
Castro v. *United States*, 3 Wall, 36;
The Baltimore & Potomac R. R. Co. v. *The District of Columbia*, No. 35 of this term.

The question is one of jurisdiction. Cases of apparent hardship may occur when the transcript has been left in the Clerk's office before the end of the term to which the writ of error or appeal is returnable, but has not, through ignorance or inadvertence, been filed and the cause docketed until after the term. Even in such cases this Court has dismissed the cause upon the broad ground that it could no more dispense with what is necessary to be done here to give jurisdiction than it could dispense with any jurisdictional element in the proceedings below. But the present is not one of these cases, and if the rule could be relaxed it ought not to be in this case. The transcript was not even left in the Clerk's office at the ensuing term. A memorandum on the transcript shows it was lodged there on June 12, 1885, one month and eight days after the adjournment of October term, 1884.

II. The want of a citation.

Except in cases of appeals allowed in open court, during the term at which the decree appealed from was rendered, a citation, returnable at the same term with the appeal or writ of error, is necessary to perfect jurisdiction of the appeal or writ of error, unless it has in some proper form been waived.

Hewitt vs. *Filbert*, 116 U. S., 143, and cases cited.

Appeals aliowed in open court stand on a different footing. The allowance, during the term, of an appeal prayed in open court is notice that the appeal will be prosecuted to the next term of this court, and is the legal equivalent of a citation. Hence, if the jurisdiction of this Court of the cause is perfected at the ensuing term, according to the notice, no citation is necessary. It may become necessary and proper, as mere matter of procedure, as when the bond was not given during the term of the court below, at which the appeal was allowed, or for other reasons, (*Railroad Co.* vs. *Sage*, 100 U. S., 662; *Dodge* vs. *Knowles*, 114 U. S., 436), but it is not necessary as matter of jurisdiction.

If, on the other hand, the jurisdiction of this Court of the cause is not perfected at the next term, then the appellant has not done what the notice declared would be done, and the citation is as necessary as matter of jurisdiction as in other cases. To hold otherwise would be to assert that the allowance not only took the place of and dispensed with a citation, but had a greater effect, and imposed upon an appellee a larger obligation than a citation. This no one would pretend.

Then was this appeal prosecuted to the next term

of this Court? Did this Court acquire jurisdiction AT ITS NEXT TERM of the cause? If it did not, a citation was necessary as matter of jurisdiction, and that it did not is a proposition which does not admit of question under the repeated rulings of the Court.

Hewitt v. *Filbert*, 116 U. S. 142;
Dodge v. *Knowles*, 114 U. S. 438;
Grigsby v. *Purcell*, 99 U. S. 505.

Respectfully submitted,
W. D. DAVIDGE,
WILLIAM H. TRESCOTT,
Solicitors for Appellee.

PIERRE FAYOLLE *et al.*
vs.
THE TEXAS AND PACIFIC RAILWAY CO.

In the S. C. U. S. No. 890, Oct. term, 1887.

Take notice, that at the meeting of the Supreme Court on Monday, the 9th day of January, 1888, or as soon as we can be heard, we will submit the motion to dismiss and the brief in support thereof, hereunto annexed.

W. D. DAVIDGE,
WILLIAM H. TRESCOTT,
Sols. for Appellee.

Service acknowledged this 13th day of December, 1887.

J. COLEMAN,
Sol'r for App't.
CHARLES A. DECHAMBRUN,
Attorney in fact for Complainants.